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ABSTRACT

Between 45,000 and 90,000 habitable New York City apartments are being kept deliberately vacant ("warehoused") by the speculators who own them. Most of these apartments have reasonable rents, affordable by middle- and low-income families. Meanwhile, the housing crisis for poor New Yorkers has grown steadily worse. As many as 75,000 people are homeless, and another 100,000 families are at a severe risk of becoming homeless. Warehousing occurs most often in the following situations: (1) co-op and condominium conversion; and (2) sale or demolition, both of which are more lucrative than renting at low rates. Warehousing can be stopped by eliminating the financial incentive to warehouse. New York City needs an anti-warehousing law that will make it unprofitable for owners to keep apartments vacant. This law should do the following: (1) require landlords to make an effort to rent apartments within a reasonable period of time; and (2) to make it illegal to reduce building services, vandalize an apartment or building, or engage in other actions that may discourage new renters or drive away existing tenants. Seattle, Washington, and several cities in New Jersey have enacted anti-warehousing laws, and anti-warehousing bills have been pending before the State Legislature and the New York City Council for the past two years. Synopses and texts of these laws and pending bills are provided in appendices. Other appendices present "The Uses and Limits of Rent Regulation" by Peter Marcuse, and "Housing in New York, 1984" by Michael Stegman, both of which provide statistical data on charts and figures. (BJV)

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WAREHOUSED APARTMENTS/WAREHOUSED PEOPLE

October 1987

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A report by the Coalition for the Homeless

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Summary

According to reliable estimates, between 45,000 and 90,000 habitable New York City apartments are being kept deliberately vacant by the speculators who own them. They are being "warehoused." And most of these apartments have reasonable rents, affordable by middle- and even low-income families.

At the same time, the housing crisis for poor New Yorkers grows steadily worse. Already, as many as 75,000 people have fallen off the edge; they live on the streets, or in shelters, or in squalid welfare hotels. And, about 100,000 families are living "doubled up" with friends and relatives, and are at a severe risk of becoming homeless.

Warehousing occurs most often in two situations:

* **Co-op and condominium conversion.** Landlords who plan to convert a rental building have an economic incentive to warehouse apartments. If the apartment has no tenant, the landlord/sponsor does not have to offer it for sale at the cheap "inside" price, but can sell it to an "outsider" for a higher sum. And, if the conversion is accomplished through a non-eviction plan (most are), the vacant apartments can be counted toward the number of units that must be sold in order for the sponsor to go through with the conversion.

* **Sale or demolition.** Because real estate prices have reached astronomical levels in New York City, landlords can often make more money by selling a rental building or tearing it down than by continuing to operate it. And the more vacant apartments, the better, because speculators don't want to get "stuck" with tenants -- probably rent-regulated -- who aren't paying as much rent as they would like.

How can warehousing be stopped? By eliminating the financial incentive to warehouse. Landlords and speculators must be prevented from keeping habitable apartments off the market.

New York City needs an anti-warehousing law that will make it unprofitable for owners to keep apartments vacant. This law should require landlords to make a "good faith" effort to rent vacant, habitable apartments within a reasonable period of time. The law should also make it illegal to reduce building services, to vandalize an apartment or building, or to engage in other actions that may discourage new renters or drive existing tenants out of their apartments.

Several cities in New Jersey have enacted anti-warehousing laws in the past two years. These laws generally require landlords to register their vacant apartments, and to rent them within a prescribed period of time.

Moreover, good anti-warehousing bills have been pending before the State Legislature and the New York City Council for the past few years. These bills would require landlords to offer apartments for rent within seven days of the time the previous tenant leaves. Landlords who violate the law would be subject to various penalties: fines, a denial of rent increases to which they would otherwise be entitled, denial of a certificate of occupancy for any new building built on the site, and the appointment of a 7-A Administrator to rent the warehoused apartments.

An anti-warehousing law will open up many thousands of affordable apartments for rent, thus easing, at least somewhat, New York's housing "crunch." And, it will establish a social policy that says that it is simply unacceptable to refuse to rent

vacant apartments when so many New Yorkers are homeless or living in seriously crowded or dangerous housing conditions.

The Extent of Warehousing

While New York City's streets and shelters are bursting with tens of thousands of homeless men, women and children, speculators are deliberately keeping vacant as many as 90,000 habitable apartments across the city.

These apartments could house all or most of the homeless families and individuals in New York. Right now, more than 5,000 families -- which include 19,000 members -- are living in emergency shelters and squalid welfare hotels. [1] More than 9,000 homeless individuals are in the shelter system [2], and another 30,000 to 50,000 people are estimated to be living on the streets. In addition, about 100,000 families are living "doubled up" with relatives or friends in cramped, overcrowded conditions, and are at a severe risk of becoming homeless. [3]

By now, most people realize that the homeless are homeless not by choice, but because they simply can't find affordable housing. In 1984, the latest year for which figures are available, the overall vacancy rate for rental apartments in New York City was less than two percent. And the vacancy rate for apartments that rent for less than $500 a month was well below two percent. [4]

Despite this severe housing crisis, and the large and growing numbers of the homeless, New York City landlords are deliberately keeping vacant between 40,000 and 90,000 habitable apartments. These are not the short-term vacancies that may be necessary to paint or repair an apartment before renting it to the next tenant. These apartments have been empty for a minimum of two months, and about 33,000 of them have been vacant for six months or more. (These figures are based on a December 1986

study, "The Uses and Limits of Rent Regulation," prepared by Professor Peter Marcuse of Columbia University for William Eimicke, Commissioner of the New York State Division of Housing and Community Development, see Appendix I; and on "Housing in New York," the 1984 study prepared by Professor Michael Stegman of the University of North Carolina for the City of New York's Department of Housing Preservation and Development, see Appendix II.)

Although these apartments are in habitable condition, they are not available for rent. They have effectively been taken off the market -- they are being "warenoused."

Moreover, most of these "warenoused" apartments have reasonable rents, affordable by middle- and even low-income families. The large majority are in rent-regulated buildings. In 1984, at least 33,000 vacant apartments had rents of less than $500 per month. [5]

Why Warehouse?

Why are so many apartments being "warehoused?" Primarily because the law and the New York City real estate market make a vacant apartment worth more than an occupied one, at least in the following situations:

* **Co-op and Condominium Conversion.** Landlords who plan to convert their buildings to co-operatives or condominiums frequently do not offer apartments for rent as they become vacant. If the apartment has no tenant, the landlord does not have to offer it for sale to the tenant at the cheap "inside" price. He can sell it to someone else at the higher "outside" price, which can be as much as double the "inside" price. Thus, vacant apartments are extremely lucrative in a conversion. (The conversion law currently puts some limits on a landlord's ability to warehouse. Under the law, the Attorney General will not accept a conversion plan if more than 10 percent of the apartments in the building have been vacant for more than five months before the submission of the conversion plan.) [6]

Another reason landlords do not want to rent vacant units is because these units can be counted toward the number of apartments the landlord has to sell before he will be allowed to go ahead with the conversion plan. (Under the law, if a building is converted under a non-eviction plan -- as most are -- the landlord must have purchase agreements for only 15 percent of the apartments in the building in order for the conversion plan to be declared effective. Vacant apartments can be counted toward this 15 percent.) [7]

* **Sale or Demolition.** Due largely to rapidly escalating real estate prices in New York City, a landlord can often make

more money by selling a building, or by tearing it down and putting up luxury housing or office space, than by continuing to operate the building as a rental.

Whether a landlord decides to demolish the building or to sell it, he will want to have as many vacant units as possible. If the building is to be sold, the new owners may want the vacancies in order to rent the empty apartments to new tenants at inflated prices.

If the building is to be torn down, the existing tenants pose a problem for the landlord. They will have to be removed -- either legally, or, as often happens, through force or coercion. Thus a landlord who plans to demolish a building (or to sell it to someone who intends to do so) will refuse to rent out apartments as they become vacant.

Why Should Warehousing Be Prohibited?

Landlords clearly have a financial interest in warehousing apartments. However, the crying need of low- and moderate-income New Yorkers for affordable housing simply must take priority over the quest for profits.

Many landlords will argue that their buildings are theirs to do with as they like, and that an anti-warehousing law would amount to an unconstitutional "taking" of their property. This argument was rejected in a recent court decision that upholds the anti-warehousing law enacted in 1986 by the City of Hoboken, N.J. [8]

In that case, the court held that Hoboken's law -- which requires landlords to rent apartments within two months of the time they become vacant -- did not violate the ban of the United States Constitution against the taking of property without compensation. Noting that the law permits Hoboken landlords to rent apartments to paying tenants, the court ruled that the statute did not deprive Hoboken landlords of all "economically viable" use of their property.

Over the years, it has become well established that government has the right to regulate and restrict owners' use of their real property, even when these regulations decrease the owners' profits or the value of their property. Zoning and landmark preservation laws have withstood such challenges in the United States Supreme Court, for example. [9]

Similarly, an anti-warehousing law does not constitute a "taking" of an owner's property, even though it may reduce the ability of owners to profit from their vacant apartments.

Given the fact that an anti-warehousing law would not

infringe the rights of owners, it is simply not tolerable to allow apartments -- most of which would go for modest sums, if rented -- to be kept off the market when so many people are desperate for affordable housing.

Thus the law must be changed -- now -- to prohibit the warehousing of vacant apartments.

How Would an Anti-Warehousing Law Work?

Anti-warehousing laws are not a new idea. Several cities in New Jersey, as well as the City of Seattle, Wash., have such laws (see Appendix III for synopses and copies of these laws). And legislators in both New York City and New York State have been trying to get such a law passed.

For the last few years, Rep. Alexander "Pete" Grannis, chairman of the New York State Assembly's Housing Committee, has sponsored anti-warehousing legislation in the State Assembly. New York City Council member Stanley Michels has had a similar bill before the City Council since 1985. In the spring of 1987, Rep. Richard Gottfried introduced an anti-warehousing bill before the New York State Assembly, co-sponsored by Rep. Grannis, that incorporates elements from both the Grannis and Michels bills.

All these bills would require landlords to make a "good faith effort" to re-rent vacant apartments, and would impose penalties on landlords for warehousing. (See Appendix IV for copies and synopses of these bills.)

Like its New Jersey neighbors, New York City needs a strong anti-warehousing law -- one that will make it unprofitable for unscrupulous landlords to keep apartments off the market. This law should require landlords to rent vacant, habitable apartments within a reasonable period of time. It should also make it illegal to reduce building services, to vandalize an apartment or building, or to engage in other behavior that may discourage new renters or drive existing tenants out of their apartments.

Fortunately, good anti-warehousing bills already exist -- the Gottfried and Michels bills mentioned above. All that is needed is to enact such a law -- and then to enforce it. Here is

how such a law would work:

Landlords' Duty. Landlords would be required to make a "good faith" effort to rent habitable vacant apartments. Whether a landlord had made a good faith effort would be determined by looking at whether he:

* maintained a building-wide vacancy rate greater than five percent or two units, whichever is greater.

* failed to offer an apartment for rent within seven days of the end of the previous tenancy.

* offered the apartment at a rent substantially greater than the legal rent.

* harassed tenants or engaged in conduct designed to cause tenants to vacate their apartments (reducing building services, violating building or housing codes, committing or causing vandalism, etc.).

If the landlord were guilty of any of the conduct above, he could be found to have warehoused, and to be penalized as follows.

Penalties. Landlords found guilty of warehousing would be subject to one-time fines of $500 for each apartment warehoused, plus an additional fine of $250 for each day they refused to rent the apartment.

These additional penalties should also be imposed:

* landlords would be denied the right to collect rent increases (guidelines increases, major capital improvement increases, etc.) to which they would otherwise be entitled.

* a certificate of occupancy or a building permit could be denied for a site on which warehousing had occurred within the previous three years.

* a court could appoint a 7-A Administrator to rent the vacant apartments, and could use the rents received by the landlord to prepare the apartments for rent.

Uninhabitable Apartments. Landlords would not have to rent apartments that were uninhabitable, or that could not feasibly be made habitable.

However, if the landlord made the apartment uninhabitable -- by vandalizing the apartment or getting someone else to vandalize it -- then the landlord would have to repair the apartment and offer it for rent.

When Duty to Rent Ends. A landlord's duty to rent an apartment would end if:

* the landlord received the permits required to demolish the building or to convert it to another use;

* the landlord received permits to rehabilitate the apartment and the rehabilitation required the units to be temporarily vacant (but the landlord would have to rent the units once they were rehabilitated).

* the city ordered the demolition or sealing up of the building.

* the building was declared unsafe by a court, and it could not be repaired for less than its appraised value (but if the landlord made the building unsafe, he would have to repair it and offer the apartments for rent).

* a government agency ordered the building vacated.

Enforcement. An anti-warehousing law would be enforced by the New York State Division of Housing and Community Renewal (if a state-wide law were passed), or by the New York City Department of Housing and Preservation Development (for a city law).

How Anti-Warehousing Laws are Working in Other Cities

Like New York City, Northern New Jersey has been faced with a severe loss in its stock of affordable housing. It is common for landlords in North Jersey to keep apartments vacant in the expectation of selling their buildings for a large sum of money, or of converting them to condominiums, also for a large profit.

In response to this situation, several New Jersey cities -- including Hoboken, Weehawken, Jersey City and West New York -- have enacted anti-warehousing laws in the last few years.

The City of Seattle, Wash. also has an anti-warehousing law, which applies to its downtown area. This area has seen massive development in recent years, which has resulted in the loss of the low-income housing that traditionally existed downtown.

These anti-warehousing laws, while recent, appear to be working. Lawyers and officials familiar with them report a decrease in warehousing in their cities.

In Hoboken, for example, landlords are required to rent vacant apartments within two months of the time the last tenant leaves. This law, which was enacted in September 1986, was upheld by a federal district court in December 1986. [10] Because Hoboken did not begin to enforce its anti-warehousing law until after the favorable court decision, no statistics are yet available on the numbers of apartments placed back on the market because of it. However, Maureen Schweitzer, an attorney with the City of Hoboken, says that it appears that fewer buildings are standing empty now, and that many landlords are complying with the anti-warehousing law.

Jersey City's anti-warehousing law is similar to Hoboken's. Enacted in February 1987, it requires landlords to rent vacant

apartments within 60 days. Landlords found guilty of warehousing are subject to fines of up to $500 per day. Edward Coleman, administrator of the Housing Clinic in Jersey City, says that the city has been enforcing the law since March 1987. According to Mr. Coleman, many landlords are voluntarily complying with the law, and buildings that sat vacant for years are now being rehabilitated.

West New York started enforcing its anti-warehousing law in January 1987. Michael Corso, tenant relations administrator for the city, says that the law has proved to be a deterrent to warehousing, and that many landlords are renting out their vacant apartments.

Weehawken adopted its anti-warehousing law in March 1986. John Weitzel, who helps administer the law for the city, reports that the city has been enforcing the law since late 1986 and that landlords are renting vacant apartments because of it.

The Seattle law prohibits the warehousing of low-income apartments in the downtown section of Seattle. Steve Fredrickson, an attorney with Evergreen Legal Services in Seattle, says that many landlords are complying with the law voluntarily, and that warehousing has decreased in downtown Seattle since the law was enacted in August 1985.

Conclusion

The time has come for New York to enact a warehousing law. While a warehousing law will not solve all New York City's housing problems, it will open up many thousands of apartments -- most of them with low and moderate rents -- that were previously unavailable to anyone. By increasing the supply of affordable apartments, such a law will make it easier for both middle- and low-income New Yorkers to find an apartment.

A warehousing law will also establish a strong social policy that says it is simply wrong to warehouse apartments when so many thousands of people are homeless or living "doubled-up" in overcrowded conditions in the apartments of friends and relatives. The so-called "right" of landlords to the profits to be made from warehousing vacant apartments must give way to the larger and more important right of the public to a basic necessity -- to a roof over their heads.

Footnotes

1. Monthly Report, New York City Temporary Housing Program for Families with Children (July 1987), published by Crisis Intervention Services of the New York City Human Resources Administration.

2. Nightly shelter census issued by the New York City Human Resources Administration (Sept. 18, 19, 20, 1987).

3. Peter Marcuse, "The Uses and Limits of Rent Regulation," p. 33 (December 1986 report to William Eimicke, Commissioner of the New York State Division of Housing and Community Renewal).

4. Stegman, Michael, **Housing in New York, 1984,** p. 80 (report prepared for the New York City Department of Housing Preservation and Development).

5. Ibid.

6. New York General Business Law, Sec. 352-eeee(2)(e).

7. New York General Business Law, Sec. 352-eeee(1)(b).

8. Help Hoboken Housing v. City of Hoboken, 650 F.Supp. 793 (D.N.J. 1986).

9. Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926) (zoning); Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978); reh. denied, 439 U.S. 883 (landmark law).

10. Help Hoboken Housing, supra.

Appendix I

The Uses and Limits of Rent Regulation

Peter Marcuse, Columbia University

5. Warehousing

Warehousing is the deliberate holding of rental units off the market in the expectation that the passage of time will result in a higher profit from their later use. This is speculation in rental units that aggravates a critical shortage without having any compensating justifications. It strikes many as one of the most outrageous misuses of property possible: to deliberately keep an apartment empty when thousands are in desparate need of housing. Warehoused units, in other countries, have been the first targets of protests, demonstrations, and even squatting; the same psychological reaction, if not the same level of dramatic protest, has frequently been witnessed here.

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185. H.V.S., Oct 23, p. 108

Warehousing is not a trivial problem in New York City. The minimum estimate of number of units warehoused is generally taken from the estimate in the 1984 H.V.S. of vacant units unavailable for occupancy "for other reasons" and not "dilapidated", "seasonal", or "held for occasional use." That figure is 24,936 units. To this should, however, be added (the calculations are summarized in Table VIII.9 below) some units technically classified as available for rent, but not in fact thus available. The best approximation to that number is the figure for "long-term vacancies," there defined as units available for rent and vacant six months or more. These constitute 8,710 units; subtracting the effect of a few public housing and in rem units that appeared in the sample, the estimate becomes 7,817 units [186] Adding these long-term vacancies to the units held off the market "for other reasons" produces a figure of 32,753. If all units vacant for 2 months or ore are included, the figure rises to 43,829. The minimum estimate of warehoused units should probably be somewhere between these two last figures; if units vacant more than three months are selected as the dividing point, the figure would be 40,182. 40,000 is probably a reliable minimum estimate for warehousing in New York City.

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186. See Stegman, p. 82, Table 3-11. Stegman in the text suggests that long-term vacant units on blocks with boarded up units should be considered separately, because they are likely to be of too low quality to be desireable by renters. Making this adjustment would reduce the minimum estimate to 5,802. That reduction does not seem warranted, however, since warehousing in gentrifying areas may well take place precisely in the neighborhood of boarded-up buildings. 64.2% of all units vacant more than 1 year are on blocks with boarded-up buildings on them, while that is only true of 19.4% of units vacant 3 months to 1 year. No firm conclusion can be drawn from these figures without further information, however. H.V.S. 200-00-69-44.

Table VIII.9

Estimate of warehoused units, New York City, 1978, 1981, 1984 187

Category	1978	1981	1984
Vacant available for rent,			
Empty over two months	31,278	20,320	18,893
Empty over six months	17,838	7,841	8,710
Vacant, Held for Other Reasons	26,677	27,421	24,936
Potentially warehoused,			
empty over two months	57,955	47,741	43,829
empty over six months	44,415	35,262	33,646
Percent of vacant available potentially warehoused,			
empty over two months	98.8%	113.2%	110.7.%
empty over six months	75.7%	83.6%	85.0%

A different method of calculation, based on the decennial census, produces a somewhat higher estimate. Using 1980 figures, one may consider as potentially warehoused any unit available for rent but not rented for two months, or classified by the census as "other vacant, not boarded up" (seasonal units are excluded from both counts). The calculation is set forth in Table 4.2:

---

187. Housing and Vacancy Surveys, 1978, 1981, 1984; for duration of vacancy, figures calculated from percentages.

Table VIII.10

Estimate of Warehoused Units, New York City, Decennial Census,1980

Vacant available for rent	73,845	
Less: vacant less than 2 months	-30,821	
Subtotal		43,024
Other vacant	43,111	
Less: boarded up	-16,390	
Subtotal		26,721
Total potentially warehoused		69,745

Thus, 70,000 may be taken as the maximum number of units likely to be have been warehoused in New York City in 1980. Based on the history discussed below, that figure might be as high as 90,000 in 1986 [188].

> **Thus our best estimate of the number of units warehoused in New York City runs between 40,000 and 90,000 units.**

The trend, further, is towards an increase in warehousing. The figures from the H.V.S. calculations are shown in Table VIII.9; warehousing as thus measured has increased from 98.8% to 110.7% of the number of vacant available units between 1978 and 1984, using the two months definition of warehousing (or from 75.7% to 85%, using the six months definition).

Trend figures paralleling the above calculations from the Decennial Census unfortunately cannot be derived from the published data, because the full break-downs are not available for 1970. However, the indicators are suggestive:

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188. The assistance of Nancy Brown, John Erlich, Tammy Karp, Debbie Kurtz, and Roe Tafaro in making the calculations on which the foregoing is based, and applying the model to a number of discrete neighborhoods, is gratefully acknowledged.

Table VIII.11

Warehousing Trends, 1970-1980, Decennial Census

	1970	1980
Vacant available for rent, more than 2 months	16,717	43,024
as percent of all available for rent	38%	58%
Other vacant	15,233	43,111

Two things are striking about these figures:

** 40-90,000 warehoused units represents a number of vacant potentially available units at least equal to, and perhaps twice as large as, the number of vacant units actually available for rental in the City today (given as 39,594 in the Housing and Vacancy Survey of 1984).

** The problem is getting worse, as the incentives to warehouse in the private market increase and no public action is taken to interfere with the trend.

Warehousing is thus another of the issues to which rent regulation needs to address; warehousing is today not adequately covered in existing law.

Appendix II

Housing in New York, 1984

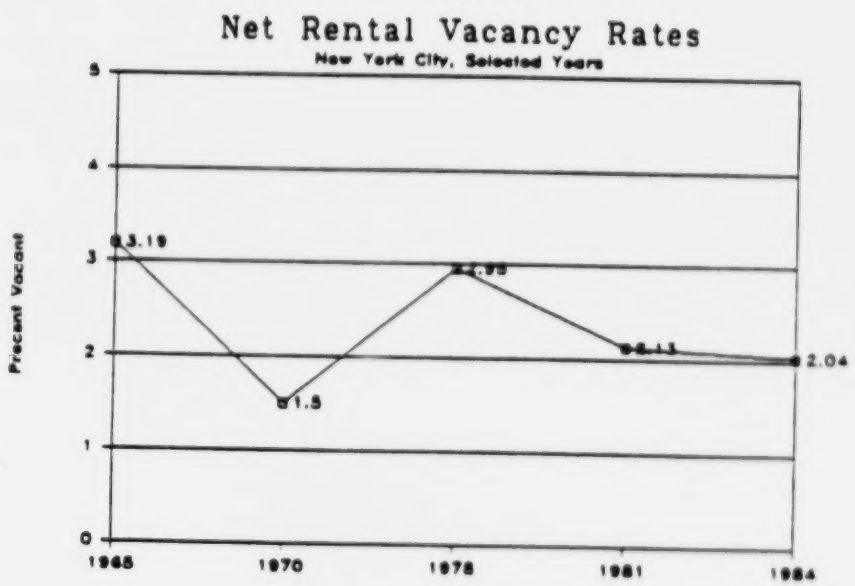
Michael Stegman, University of North Carolina

Chapter Three

Vacancy Rates

The vacancy rate for rental housing in New York City in the first quarter of 1984 was a very low 2.04 percent. This represents a further tightening of the rental market since 1981, when the vacancy rate was 2.13 percent (Table 3.1). The number of vacant units available for rent and in habitable condition declined since 1981 from 42,157 to 39,594. This is a decrease of 6 percent since 1981 and of nearly one-third since 1978, which was the last year the number of available rental vacancies in New York City exceeded 50,000 units.

Figure 3.1



In general, rental vacancies are distributed across the city in rough proportion to each borough's share of the occupied rental stock (Table 3.2). although a decline in Brooklyn's rate to below 2 percent is noteworthy. Falling vacancy rates, rising rents (especially for decontrolled units in Brooklyn), and a sizable increase in the number of upper-income families--all of which will be discussed in other chapters--suggest that neighborhood revitalization is taking place in parts of Brooklyn. As in 1981, the vacancy rates across the city differ somewhat according to the rent asked and the structure type; but the significance of those variations is far outweighed by the scarcity of vacancies throughout the market.

Table 3-1. Vacant available and occupied rental units and net vacancy rates in New York City, selected years

Year	Total	Occupied	Vacant available	Net rental vacancy rate
1984	1,940,362	1,900,768	39,594	2.04%
1981	1,976,044	1,933,887	42,157	2.13
1978	1,988,712	1,930,030	58,682	2.95
1975	2,056,005	1,999,037	56,968	2.77
1970	2,200,100	2,167,100	33,000	1.50
1968	2,122,093	2,096,058	26,035	1.23
1965	2,145,454	2,077,031	68,423	3.19
1960	2,116,300	2,078,000	38,300	1.81

Sources: 1960-1981 data from Stegman, p. 93; 1984 data from U.S. Bureau of the Census 1984 New York City Housing and Vacancy Survey.

Table 3-2. Vacant available and occupied rental units and net rental vacancy rates, by borough, New York City, 1978, 1981, and 1984

	Rental units (thousands)								
	Occupied			Vacant available			Net vacancy rate		
Borough	1978	1981	1984	1978	1981	1984	1978	1981	1984
Total	1,930	1,934	1,901	59	42	40	2.95%	2.13%	2.04%
Bronx	329	326	313	18	8	8	5.18	2.40	2.44
Brooklyn	582	581	572	18	13	11	3.07	2.11	1.92
Manhattan	581	585	573	14	11	12	2.29	1.90	2.12
Queens	402	402	402	8	9	7	1.88	2.23	1.73
Richmond	36	40	41	1	1	1	2.57	2.64	2.52

Sources: 1978 and 1981 data from Stegman, p. 96; 1984 data from U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

NOTE: Vacancy rate calculations based on unrounded data.

Perhaps as significant as the decline in the number of habitable vacancies, however, is the reduction that occurred in the number of dilapidated vacant apartments in New York City between 1981 and 1984. The number of these units--which, because they are unsuitable for occupancy, are not included in the computation of the net vacancy rate--declined by almost 6,000, from 15,504 in 1981 to 9,660 in 1984. Whether a decrease in the number of dilapidated vacant units is a positive or negative market indicator depends on whether the number of occupied dilapidated units has risen. In chapter 6 we show that a lower percentage of renters occupied dilapidated housing in 1984 than in 1981, so we can conclude the decrease in vacant substandard units is a positive sign. This decline may be the result of an increase in private reinvestment activity that naturally accompanies a tightening market. On the other hand, however, it may reflect intensified city efforts to demolish dilapidated city-owned apartments and the results of publicly supported rehabilitation efforts to increase the supply of low- and moderate-income housing.

The rest of this chapter describes the vacancies in the city's housing stock in considerable detail, referring where appropriate to changes in occupancy conditions since 1981. The most important finding in this chapter is that the rental vacancy rate in 1984 was as low as it has been since 1975, even though the rate was substantially lower in 1960 and 1970. Another important finding is that the proportion of long-term vacancies is increasing. We treat the issue of extended vacancies more fully than we did in the 1981 report, and we suggest in a later section that it might be time to adjust downward the net rental vacancy rate to take account of the growing pool of unrentable vacancies. We also explore the issue of unavailable vacancies in this year's report, because in a strong co-op market there is the possibility that a segment of this pool of rental units is being held off the market as a prelude to conversion. The chapter concludes with an analysis of vacancies in the owner market and the role played by cooperative conversions in that market.

Estimating the Vacancy Rate

As has been documented in earlier reports, various laws regulating residential rents in New York City define a housing shortage as a vacancy rate below 5 percent. Because of the importance of this rate, both in terms of the proper administration of the rent regulation laws and as a key indicator of market conditions, it is necessary that there be both broad understanding of how the vacancy rate is defined and confidence in the statistical accuracy of the estimated vacancy rates, as measured by the U.S. Bureau of the Census.

As used here, and in all previous reports in this series, the term "vacancy rate" is really a net rate, because it includes only vacant non-dilapidated units that are available for rent:*

$$\frac{\text{Vacant units, available for rent}}{\text{Vacant units, available for rent + renter-occupied units}}$$

* Dilapidated housing, though vacant and ostensibly available for rent, is not counted in the vacancy rate because it does not meet minimum standards

Vacancy Rates Across the City

As indicated above, the city's available rental vacancies in 1984 were distributed throughout the boroughs in pretty much the same fashion as the occupied rental stock, except that Queens and Brooklyn were underrepresented

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of habitability. If substandard housing were included, the rate in New York City would increase from a net of 2.04 percent to a gross rate of 2.53 percent. Comparable adjustments for 1981 would have increased the net rental vacancy rate from 2.13 percent to a gross rate of 2.90 percent. Comparable figures for 1978 are 2.95 percent and 3.62 percent, respectively.

The net rental vacancy rate also excludes vacant seasonal housing. regardless of condition, since it does not provide year-round shelter. Vacant apartments, even if in sound physical condition and not seasonal, are excluded from the net vacancy count if they are held off the market or are considered available only for occasional use. Finally, new rental housing that has never been occupied is considered available for rent as soon as the city has issued it a certificate of occupancy. This contrasts with the practice of the Annual Housing Survey and the decennial Census, which classify as vacant and available any new housing that has all exterior windows and doors installed and final usable floors in place, regardless of whether it has been granted a certificate of occupancy.

Two kinds of errors are possible in the Census Bureau's statistical estimate of the net rental vacancy rate. The first is referred to as nonsampling error, such as the misclassification of a vacant unit as occupied, or vice versa. Explicit measures of nonsampling error are unavailable; the Census Bureau tries to keep them to an absolute minimum by sending a second enumerator to all sampled dwellings originally reported as vacant.

The second kind of error in the vacancy estimate is sampling error, which results from the fact that the actual sample used in the 1984 Housing and Vacancy Survey was chosen from a large number of different samples of similar size that could have been selected. Different samples would yield different vacancy estimates. While the exact sampling error, the extent to which any particular sampling result differs from the average of all possible results is unknown, the standard error of the estimate is a statistical measure that is commonly used to approximate sampling error. Because of the relevance of the vacancy rate to city housing policy, a high standard of accuracy is required of the survey. It calls for the standard error of the estimate of the net rental vacancy rate to be no more than one-fourth of 1 percent if the actual net vacancy rate is 3 percent.

In fact, the results of the 1984 Housing and Vacancy Survey show that the accuracy of the estimate is 0.16 percent. This means that the chances are 95 times out of 100 that, if a census of every housing unit in the city had been taken, the net vacancy rate would vary from the sample estimate by no more than 2 standard errors, or by 0.32 percent. That is, given the Census estimate of a net rental vacancy rate of 2.04 percent, the chances are 95 out of 100 that the true vacancy rate is neither less than 1.72 percent nor greater than 2.36 percent.

and the Bronx was somewhat overrepresented (Table 3.2). As in past years, net vacancy rates for the boroughs clustered tightly around the citywide average. Individual vacancy rates varied from a low of 1.73 percent in Queens to a high of 2.52 percent in Richmond. As indicated earlier, Brooklyn's 1984 net vacancy rate of just 1.92 percent was much lower than in 1978, when it was 3.07 percent. Similarly, the net vacancy rate of 2.44 percent in the Bronx continued to signal strong demand for the available supply of physically sound housing in that borough.

Vacancy Duration

Information on the length of time available apartments remain unrented is as telling as the vacancy rate, particularly in slowly growing or declining population centers. Regardless of the level of vacancies, the longer it takes the market to absorb the available supply, the looser market conditions are and the better the bargaining position of the houseseeker will be. Conversely, the shorter the mean or median vacancy duration, the tighter the market and the better the landlord's bargaining position (Table 3.3).

Overall, vacancy durations have scarcely changed from their 1981 rates. Then as in 1984, about half the vacancies had been on the market for less than two months at the time of the Housing and Vacancy Survey, including one-third that had been on the market for less than one month. The citywide median vacancy duration rose slightly from 1.9 months to 2.0 months between 1981 and 1984; the increase resulted from an increase in the proportion of long-term vacancies. Indeed, the trend toward a bimodal distribution of rental vacancies is becoming increasingly pronounced. One segment of the vacancy pool is characterized by quick absorption and the other by its lingering availability.

Thus, despite a severe shortage of rental housing opportunities in New York City, one out of every two available vacancies in 1984 had been on the market for at least two months, and about half of these had been vacant for six months or more. That is in contrast to 1981, when fewer available rental vacancies had been on the market for six months or more.

The dichotomy between desirable and undesirable housing vacancies also is reflected in the vacancy duration rates for the individual boroughs. In all cases, between 30 percent and 50 percent of available rental vacancies in 1984 had been on the market for three months or more, while between one-quarter and 42 percent had been on the market for less than a month at the time of the Census survey.

In the Bronx, Queens, and Richmond the distributions of vacancy durations showed roughly equal proportions of very short (less than one month) and extended (six months or more) vacancy periods. In contrast, Manhattan and Brooklyn were characterized by relatively higher proportions of short-term than long-term vacancies. Most surprisingly, Brooklyn had the highest concentration of short-term vacancies in 1984--42 percent of available units there had been on the market for less than one month. This compares to a short-term vacancy duration rate of one-third for Manhattan. Coupled with the decline in its overall net rental vacancy rate, the increase in the percent of short-term vacancies in Brooklyn could reflect the heightened level of private market activity to which we have already alluded. More will be said about

Table 3-3. Duration of vacancies, all renter units, by borough, New York City, 1981 and 1984

	Total		Bronx		Brooklyn		Manhattan		Queens		Richmond	
	1981	1984	1981	1984	1981	1984	1981	1984	1981	1984	1981	1984
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Less than one month	32.4	32.4	26.1	24.7	28.9	42.0	29.1	33.4	49.9	23.5	15.7	32.7
1-2 months	19.5	17.6	14.9	20.0	23.7	18.1	18.9	14.1	16.7	20.2	32.4	16.9
2-3 months	15.3	9.7	27.6	9.8	14.2	8.1	12.8	12.6	10.7	5.7	-0-	18.0
3-6 months	14.3	17.3	13.5	19.2	18.8	15.1	11.1	14.4	12.4	26.3	16.5	-0-
More than 6 months	18.6	23.0	17.9	26.3	14.4	16.6	28.1	25.5	10.3	24.3	35.4	32.4
Median months vacant	1.9	2.0	2.3	2.5	1.9	1.4	2.2	2.2	1.0	3.1	3.3	2.0

Sources: 1981 data from Stegman, p. 97; 1984 data from U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

Table 3-4. Net rental vacancy rates by year structure built, New York City, 1981 and 1984

	1981		1984	
Year structure built	Available vacancies	Net vacancy rate	Available vacancies	Net vacancy rate
Total	42,156	2.13%	39,594	2.04%
Post-1947	11,930	1.63	12,869	1.86
1991 or later	N.A.	N.A.	1,086	7.23
1970-1980	2,681	1.70	1,257	0.80
1960-1969	3,222	1.30	3,821	1.83
1947-1959	6,027	1.84	6,705	2.15
Pre-1947	29,353	2.41	25,462	2.11
Not reported	873	3.39	1,265	3.05

Source: 1981 data from Stegman, p. 100; 1984 data from U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

Note: 1981 vacancies for 1970-1980 recomputed from 1981 New York City Housing and Vacancy Survey in order to make classes consistent with 1984 Housing and Vacancy Survey.

this issue later.*

Age and Type of Structure

As in years past, the 1984 vacancy rate for newly built housing units was higher than for older structures (Table 3.4). For buildings first available for occupancy in 1981 or later, the net rental vacancy rate was 7.2 percent. Because of the very small number of newly built apartments in the HVS sample, however, the high standard error of the estimate of the vacancy rate in this sector prevents us from concluding that vacancy rates for new and all other rental housing were significantly different from each other.

Indeed, given the HVS-determined vacancy rate for new housing, we might be tempted to view this as an indication of a general loosening of the market, but the very low vacancy rate for housing built in the 1970-1980 period should put that proposition to rest. Less than 1 percent of the nearly 160,000 apartment units built between 1970 and 1980 were enumerated as vacant and available for rent in the first quarter of 1984. This extremely low vacancy rate suggests that the higher vacancy rate for new construction results more from the normal lag in initial rent-up than from lack of vigorous market demand. This inference is supported by the fact that demand for modern apartments is very strong. The net vacancy rate in 1984 for all housing built after 1947 was just 1.86 percent.

Vacancy rates did not vary significantly with structure type in 1984 (Table 3.5), although as a group, tenement units were somewhat more likely to be vacant than are apartments built under the more contemporary multiple dwelling code (enacted in 1929). It is not surprising that newer living units were less likely to be vacant than older apartments, but that tenement buildings built between 80 and 100 years ago had 1984 vacancy rates of just over 2 percent is somewhat surprising. Another indication of the tight market is the decline in the vacancy rate for housing classified by the Census as "other," from 12.02 percent in 1981 to 4.04 percent in 1984. Included in the "other" category are rooming houses, tenements used for single-room occupancy, and other special-purpose buildings too few in number to break out in the sample. The lower vacancy rate for this housing probably results from a combination of a reduction in supply and continuing strong demand for housing by lower-income single people.

An examination of data on vacancy duration by structure type for 1981 and 1984 provides additional support for the hypothesis that city vacancies can be broken down between a shrinking pool of desirable units that are quickly absorbed and a growing pool of undesirable shelter alternatives that are

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* Having said this, we cannot report that the interborough variation in median vacancy durations exceeds what would be expected from sampling variability. The small number of vacant units sampled in each borough produces large standard errors for the estimates of differences in types of vacancies within boroughs. Thus, because the percentage distributions are subject to large sampling variability, these findings on interborough differences in vacancy durations should be treated as suggestive rather than as firmly established fact.

Table 3-5. Vacant available rental units and net vacancy rates, by structure classification, New York City, 1978, 1981, and 1984

Structure classification	Vacant available units, 1984	Net rental vacancy rate		
		1978	1981	1984
Multi-unit buildings	32,464	3.05%	2.17%	1.93%
Old Law tenements	4,221	3.97	1.82	2.31
New Law tenements	11,831	3.99	2.78	2.17
Multiple dwellings built after 1929	6,772	1.65	1.17	0.93
One- or two-family houses converted to apartments	2,795	4.03	2.10	2.79
Other multiple dwellings*	1,126	8.05	12.02	4.04
Not reported, not found, or not available	5,720	3.17	3.65	5.69
One- or two-family houses	7,130	2.29	1.91	2.77

Source: 1978 and 1981 data from Stegman, p. 101; 1984 data from U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

*Includes apartment hotels built before 1929, tenements used for single-room-occupancy, one-or two-family houses converted to rooming houses, and miscellaneous class B structures.

Table 3-6. Duration of vacancy by structure classification, all vacant for rent units, New York City, 1981 and 1984

	Old law		New law		Post-1929 multiples		Private house	
	1981	1984	1981	1984	1981	1984	1981	1984
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Less than one month	31.8	17.3	28.6	30.2	51.0	23.6	35.0	34.5
One to two months	20.1	19.1	18.3	18.8	20.1	25.4	26.3	18.1
Two to three months	16.1	5.1	10.2	2.9	13.7	20.0	15.0	5.4
Three to six months	21.5	14.7	13.4	22.1	15.3	17.0	7.7	5.0
Six months or more	10.5	43.8	21.5	26.0	---	14.0	16.1	37.0
Median months vacant	1.9	4.7	2.2	2.3	1.1	2.0	1.6	1.9

Sources: Stegman, p. 99; U.S. Bureau of the Census, 1981 and 1984 New York City Housing and Vacancy Surveys.

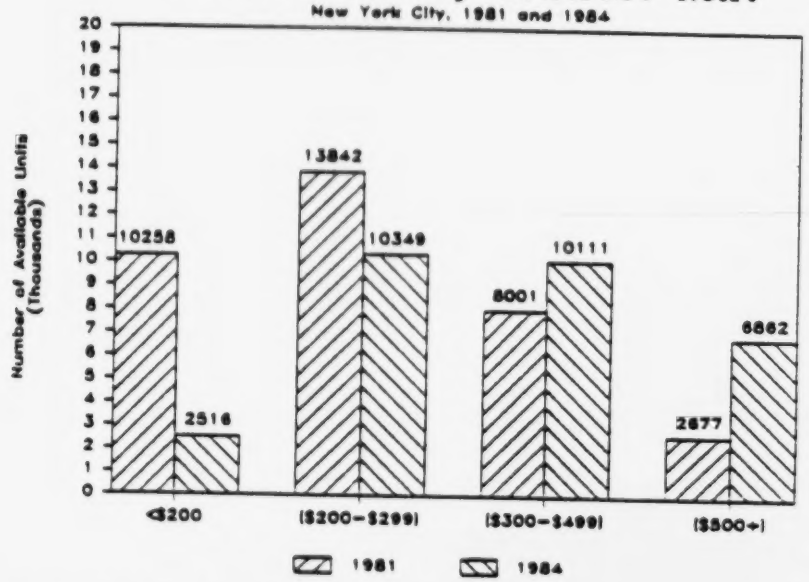
becoming unrentable (Table 3.6).

While the fraction of long-term vacancies increased only slightly for all buildings, from 19 percent to 23 percent between 1981 and 1984 (which is not statistically significant), long-term vacancies in the Old Law tenement sector quadrupled during the same period, rising from 11 percent to 44 percent. Although demand for a substantial segment of this stock remains very high, for a growing portion demand has fallen.

Figure 3.2

Vacant Units by Contract Rent

New York City, 1981 and 1984



This proposition suggests that demand remains very strong for all rental units, including tenements, that are in good condition, well located, and in desirable neighborhoods. Conversely, vacant units that may have several maintenance deficiencies and are located in undesirable neighborhoods are becoming increasingly difficult to rent. While data to test this hypothesis are incomplete. the Housing and Vacancy Survey does show that vacant units are slightly more likely to be located near boarded-up buildings than occupied units and that vacancies take longer to rent when they are in such areas (Table 3.8).

Citywide, about one-fifth of all occupied rental units in 1984 were on blocks with boarded-up buildings, down three percentage points from 1981 and five points from 1978 (Table 3.7). Similar reductions have been recorded for each control status. And the decline in nearby board-ups was even more dramatic for vacant, available apartments. The fraction on streets with board-ups fell from 45 percent in 1981 to just 28 percent in 1984. At the same time, in 1984 the median duration for vacancies on blocks with boarded-up buildings was 2.9 months, compared to just 1.7 months where there were no nearby board-ups (Table 3.8). The median was higher largely because more than 30 percent of all vacancies with boarded-up buildings nearby had been vacant for more than six months, compared to just 17 percent of all other vacancies.

Table 3-7. Occupied and vacant rental units with presence of boarded-up structures on block (interviewer observation), New York City, 1978, 1981, and 1984

	Occupied				Vacant			
	1978	1981	1984	Percent change 1981-1984	1978	1981	1984	Percent change 1981-1984
Total	25.4%	23.3%	20.5%	-12.0%	44.7%	45.0%	27.5%	-38.9%
Controlled	25.3	20.4	17.1	-16.2	N.A.	N.A.	N.A.	N.A.
Decontrolled	28.3	27.9	20.8	-25.4	43.6	48.6	25.5	-47.5
Pre-1947 stabilized	34.1	30.8	26.9	-12.7	54.9	48.9	27.2	-44.4
Post-1947 stabilized	8.6	8.4	6.6	-21.4	29.4	23.8	15.6	-34.4

Sources: 1978 and 1981 data from Stegman, p. 103; 1984 data from U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

Table 3-8. Presence of boarded-up buildings near vacant units, New York City, 1984

	Percent of total	Total
Vacant units with boarded-up buildings nearby	100.0%	9,999
Vacancy duration:		
Less than one month	27.9	2,593
1 to 2 months	9.8	908
2 to 3 months	13.2	1,228
3 to 6 months	17.8	1,658
6 months or more	31.3	2,908
Not reported	---	703
Median vacancy duration	2.9 months	---
Vacant units with no boarded-up buildings nearby	100.0%	26,365
Vacancy duration:		
Less than one month	34.0	8,659
1 to 2 months	21.9	5,564
2 to 3 months	8.1	2,058
3 to 6 months	19.2	4,877
6 months or more	16.9	4,295
Not reported	---	911
Median vacancy duration	1.7 months	---

Source: U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

Contract Rent

As expected, net vacancy rates were extremely low in 1984 across virtually all rent classes. Vacancy rates were below 1.5 percent in all rent classes below $200 per month and less than 1 percent in most of them (Table 3.9). In fact, in only the $250-$299 and above-$500 rent classes did net vacancy rates exceed 2.0 percent in 1984. The highest vacancy rate recorded in the city was for apartments with asking rents of $500 or more, and less than 3 percent of those units were unrented.

Between 1981 and 1984, the total number of available vacancies declined by 2,563 units while the number of vacant units with asking rents below $300 a month declined by more than 11,000. Conversely, there were nearly 6,300 more vacant apartments with asking rents greater than $300 a month in 1984 than in 1981.

Control Status

No vacancy rate can be computed for the controlled inventory because controlled apartments that are vacated become either decontrolled or stabilized, depending on building size. A vacancy rate for rent-stabilized units can be computed in either of two ways: by ignoring or by not ignoring the fact that the occupied rent-controlled stock represents a potential pool of pre-1947 vacancies. By ignoring controlled apartments and replicating the procedures used thus far, the 16,500 pre-1947 stabilized available vacancies produce a 1984 net vacancy rate of 2.52 percent. Similarly, the 4,800 post-1947 stabilized available vacancies produce a net vacancy rate of 1.54 percent. When the vacancies in the pre- and post-1947 inventories are aggregated, a total stabilized net rental vacancy rate of 2.21 percent can be computed for 1984 (Table 3.10).

Inasmuch as rent-controlled apartments in buildings containing six or more units become part of the stabilized inventory as soon as they are vacated, the alternative estimating procedure is to include all occupied controlled apartments in these buildings in the denominator of the vacancy equation. Doing so lowers the pre-1947 net vacancy rate from 2.52 percent to 1.96 percent and the total stabilized net vacancy rate from 2.21 percent to 1.84 percent. The post-1947 vacancy rate remains unchanged at 1.54 percent.

To be consistent, the net vacancy rate in the decontrolled sector also should be adjusted to account for the currently occupied stock of rent-controlled apartments in buildings with fewer than six units. Including these controlled apartments in the equation lowers the decontrolled net vacancy rate from 2.95 percent to 2.70 percent.

Adjusting the Vacancy Rate for Long-Term Vacancies

The preceding analysis of vacancy durations suggests that a substantial fraction of vacancies remain unrented for long periods of time. At the time of the 1984 HVS more than one-third of all available vacancies with asking rents of less than $200 a month had been on the market for six months or more (Tables 3.11, 3.12, and 3.13). This compares with just 21 percent that had been vacant for less than one month. Clearly, the demand for inexpensive apartments in New York City is far too great for a supply of habitable,

Table 3-9. Vacant available rental units and net vacancy rates by monthly contract rent, New York City, 1981 and 1984

Monthly contract rent	Number of vacant available units 1981	1984	Change in number of vacant available units 1981-1984	Net rental vacancy rate 1981	1984
Total	42,157	39,594	-2,563	2.13%	2.04%
Less than $100	923	360	-563	0.87	0.52
$100-$124	526	896	370	0.67	1.44
$125-$149	1,240	191	-1,049	0.99	0.26
$150-$174	3,946	703	-3,243	2.25	0.69
$175-$199	3,623	366	-3,257	1.95	0.37
$200-$249	7,440	4,048	-3,392	1.86	1.50
$250-$299	6,402	6,301	-101	2.08	2.18
$300-$399	6,209	6,535	326	2.17	1.45
$400-$499	1,792	3,576	1,784	1.57	1.77
$500 or more	2,677	6,862	+4,185	2.08	2.99
No cash rent, or not reported	7,378	9,756	2,378		

Sources: 1981 data from Stegman, p. 101; 1984 data from U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

Table 3-10. Vacancy rate by selected control status, New York City, 1981 and 1984

	Number of vacant available units		Net vacancy rate		Adjusted net vacancy rate*	
	1981	1984	1981	1984	1981	1984
Controlled	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Decontrolled	6,261	8,314	2.17%	2.95%	1.94%	2.70%
All stabilized	27,477	21,297	2.87	2.21	2.27	1.84
Pre-1947 stabilized	19,693	16,525	3.10	2.52	2.22	1.96
Post-1947 stabilized	7,784	4,772	2.43	1.54	2.43	1.54

Sources: 1981 data from Stegman, p. 102; 1984 data from U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

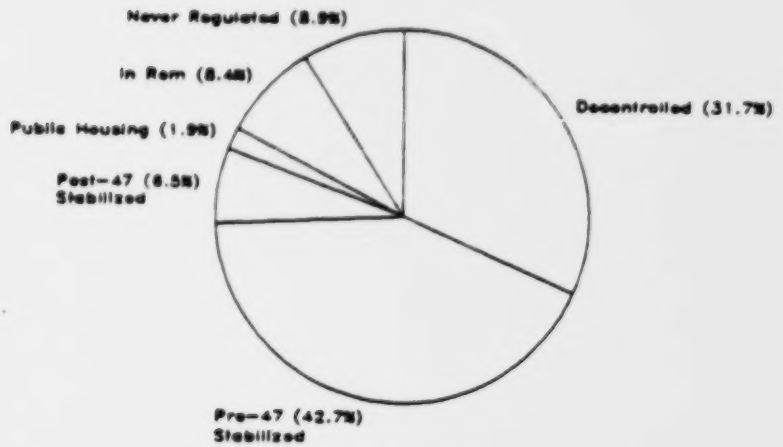
*The vacancy rate for decontrolled and pre-1947 stabilized units is recalculated to reflect the fact that vacant units in these inventories can come from the controlled stock. Pre-1947 stabilized vacant units are drawn from both the pre-1947 stabilized stock and from rent controlled units which become vacant and are located in buildings with six or more units. Thus, controlled units located in structures with six or more apartments are included in the denominator when calculating the adjusted net vacancy rate. Similarly, controlled units in buildings with fewer than six units are included in the base for calculating the decontrolled adjusted net vacancy rate.

inexpensive apartments to remain vacant that long. Similarly, as of the 1984 HVS more than a quarter of all vacant apartments with asking rents of between $200 and $299 a month had been without tenants for at least six months. The dual nature of the vacancy pool is reflected in the fact that 37 percent of the vacancies in this same rent class had been on the market for less than a month. Sixteen percent (1,638 units) of all vacant apartments with asking rents between $300 and $500 had been vacant for at least half a year, while less than 10 percent of all vacant apartments with asking rents of $500 or more had been on the market that long.

Figure 3.3

Control Status of Long-term* Vacancies

New York City, 1984



* Vacant Six Months or More

If New Yorkers do not consider these extended vacancies to be suitable housing alternatives, then the effective net rental vacancy rate in 1984 was lower than 2.04 percent. To explore the impact of adjusting the pool of available vacancies to account for this nonmarketable supply, we defined four types of long-term vacancies. The first and most restrictive definition we used was that a unit be vacant for at least six months and on a block with boarded-up buildings. If the 2,908 vacant apartments in the city that met this criterion are subtracted from the pool of available vacancies, New York's 1984 net rental vacancy rate would decline from 2.04 percent to just 1.89 percent (Table 3.14).

A somewhat less restrictive definition of long-term vacancy is that a unit be vacant for three months or more and on a block with boarded-up buildings. More than 4,500 apartments in New York met this criterion in the 1984 HVS. Excluding them from the vacancy rate calculation reduces the adjusted rental vacancy rate to 1.81 percent.

If we ignore proximity to board-ups and judge that any vacant apartment that has been on the market for at least a year is actually unavailable, in the sense that either nobody wants it or it is unrentable for other reasons, the adjusted vacancy rate would fall to 1.76 percent. Finally, we can define

Table 3-12. Duration of vacancies by number of rooms, New York City, 1984

	Number	Percent	Number of Rooms					
			1	2	3	4	5	6 or more
Less than one month	12,239	100.0%	4.7	7.9	43.5	21.9	9.8	12.2
1 to 2 months	6,656	100.0%	10.9	13.8	40.8	23.7	5.4	5.4
2 to 3 months	3,647	100.0%	19.9	4.7	35.9	29.6	-0-	9.9
3 to 6 months	6,536	100.0%	5.5	11.4	52.7	25.0	5.4	-0-
6 months or more	8,710	100.0%	5.0	13.6	30.3	35.6	9.0	6.5

Source: U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

Table 3-11. Apartments vacant six months or more by rent control status, New York City, 1984.

	Long-term vacancies		All vacancies		Percent of vacancies that are long-term
	Number	Percent	Number	Percent	
Total	8,710	100.0%	39,594	100.0%	22.0%
Decontrolled	2,765	31.7	8,314	21.0	33.3
Pre-1947 stabilized	3,716	42.7	16,525	41.7	22.5
Post-1947 stabilized	567	6.5	4,772	12.1	11.9
Public housing	162	1.9	1,642	4.1	9.9
In rem	731	8.4	2,345	5.9	31.2
Other*	771	8.9	5,997	15.1	12.9

Source: U.S. Bureau of the Census, 1984 New York Housing and Vacancy Survey.

*"Other" includes "SRO," "Never regulated," and "State and city assisted."

an even less restrictive standard of long-term vacancy: that a unit be on the market for at least six months without regard to proximity to board-ups. Subtracting the 8,710 units in the city that met this standard in 1984 from the larger pool of vacancies causes the city's net rental vacancy rate to plummet to 1.60 percent.

Although not all of the above data are available at the neighborhood level, we can adjust net vacancy rates at the borough level for units vacant for six months or more (Table 3.15). Not surprisingly, since a large fraction of available units in the Bronx were long-term vacancies, the adjusted vacancy rate there drops below 2 percent (to 1.86 percent from 2.44 percent). Similarly, the adjusted rates for the remaining boroughs are lower than those identified earlier. Brooklyn's already low vacancy rate falls from 1.92 percent to 1.61 percent. Manhattan's drops from 2.12 percent to 1.63 percent. Removing the 5,400 long-term vacancies from the pool of available apartments in Queens reduces that borough's rate from 1.73 percent to just 1.33 percent. Finally Richmond's adjusted vacancy rate falls from 2.52 percent to 1.72 percent.

Unavailable Vacancies

During the 1981 City Council hearings concerning the extension of rent regulations, a great deal of attention was paid to the issue of unavailable vacancies. Because of this interest we compiled data on unavailable vacancies from both the 1981 and 1984 Housing and Vacancy Surveys.

Under Census definitions and conventions used by New York City since the first HVS was conducted, unavailable vacancies have been divided into four separately identifiable categories (Table 3.16). As discussed in the beginning of this chapter, unoccupied apartments that are in substantial structural disrepair and classified by Census enumerators as dilapidated are categorized as vacant and unavailable for purposes of computing the net rental vacancy rate. There were 9,660 vacant dilapidated units in New York City in 1984, about 6,000 fewer than three years earlier. These units were located in the Bronx (3,000) and Brooklyn (3,903); Manhattan had 2,212 and Queens just 545. Richmond had none.

Vacant seasonal units, regardless of condition, are considered unavailable because they do not provide year-round housing opportunities and frequently are not equipped to do so. The number of seasonal vacancies has all but disappeared as the inventory of seasonal units has decreased in New York City. The city's few seasonal vacancies in 1984 were in Brooklyn and Richmond.

Another, somewhat larger pool of unavailable vacancies comprises apartments that are held for occasional use. The number of these vacancies doubled between 1981 and 1984, from 3,300 to 6,200 apartments. Included in this category are apartments that are rented by people whose principal residences are elsewhere and who use these apartments for intermittent periods when they come to New York for business or entertainment. Also included here are apartments held by corporations headquartered inside and outside the city to provide transient quarters to visiting executives. In all of these cases, the apartments serve as substitutes for hotels.

Table 3-13. Percent of vacant available rental units on the market for less than one month, and six months or more, by contract rent New York City, 1984

Contract rent	Total number of vacant units	Percent vacant less than one month	Percent vacant six months or more
All units	39,594	32.4%	23.1%
Less than $200	2,516	21.3	35.7
$200 - $299	10,349	36.9	26.0
$300 - $399	6,539	38.5	17.0
$400 - $499	3,576	25.8	14.8
$500 or more	6,863	41.1	8.2

Source: U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

Table 3-14. Net rental vacancy rate excluding long-term vacancies, New York City, 1984

	Number of vacant available units	Number of adjusted vacant available units	Adjusted net rental vacancy rate
Vacant 6 months or more near board-ups	2,908	36,686	1.89%
Vacant 3 months or more near board-ups	4,566	35,028	1.81
Vacant one year or more	5,577	34,017	1.76
Vacant 6 months or more	8,710	30,884	1.60

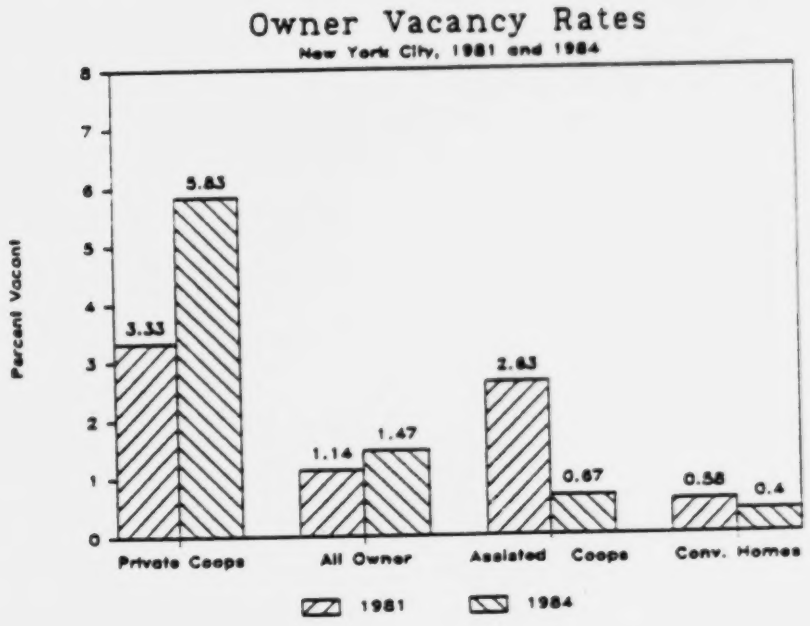
Source: U.S. Bureau of the Census, 1984 New York City Housing and Vacancy

The largest and probably most heterogeneous pool of unavailable vacancies is defined as being held for other reasons. Whatever the reasons are, they apply to 25,000 vacant standard apartment units in New York City; if they had been available for rent, they would have raised the city's vacancy rate by 60 percent.* Included in this catch-all category are apartments being renovated in buildings that are not undergoing general renovations and units that are vacant due to litigation or estate-related matters. Also in this pool could be apartments whose owners are choosing to keep them unrented because of plans to convert their buildings or because of uncertainties over the future of rent regulations. Since the Housing and Vacancy Survey was taken at about the time when rent regulation responsibilites were transferred from the city to the state and close to the deadline for owners to register the rents on their occupied stabilized apartments, it is possible that some apartments are being held off the market until the rent regulations policies crystallize. Until a special survey of these units is taken and the sample size is enlarged so the results can be accepted with confidence, we will not learn very much about this potential rental housing resource.

Vacancies in the Owner Sector

The net vacancy rate for all owner housing was 1.47 percent in 1984, an increase of three-tenths of one percent since 1981 (Table 3.17). The net vacancy threshold for owner housing needed to provide reasonable choice to housing consumers without untoward demand-induced upward price pressures is 1.5 percent, compared to 5 percent in the rental sector. According to this criterion, then, the city's owner market does not seem to be as tight as the

Figure 3.4



*Excludes apartments that are "rented not yet occupied" and "sold not yet occupied."

Table 3-15. Adjusted net rental vacancy rates by borough for long-term vacancies, New York City, 1984

Borough	Occupied	Vacant available	Vacant 6 months or more	Adjusted vacant available	Adjusted net vacancy rate
Total	1,900,768	39,594	8,710	30,884	1.60%
Bronx	313,275	7,850	1,928	5,922	1.86
Brooklyn	571,513	11,190	1,827	9,363	1.61
Manhattan	573,106	12,409	2,929	9,480	1.63
Queens	401,672	7,082	1,681	5,401	1.33
Richmond	41,202	1,064	345	719	1.72

Source: U.S. Bureau of the Census, 1984 New York City Housing and Vacancy Survey.

Note: Since some units did not report on the duration of the vacancy, the adjusted vacancy rate is very slightly higher than if complete information were available.

Table 3-16. Reasons vacancies are unavailable by borough, New York City, 1981 and 1984

	Number of unavailable vacancies	Total	Dilapidated	Seasonal	Held for occasional use	Held for other reasons
			1981			
Total*	49,300	100.0%	15,504	3,081	3,294	27,420
Bronx	8,305	100.0%	58.1	-0-	4.6	37.3
Brooklyn	17,725	100.0%	19.7	6.1	6.1	68.1
Manhattan	13,268	100.0%	43.6	1.3	8.5	46.6
Queens	9,312	100.0%	15.0	17.8	5.9	61.4
Richmond	690	100.0%	-0-	24.3	24.0	51.8
Percent of unavailable vacancies		100.0%	13.3%	6.3%	7.5%	72.8%
			1984			
Total	41,174	100.0%	9,660	361	6,216	24,936
Bronx	10,356	100.0%	29.0	-0-	24.2%	46.8
Brooklyn	10,255	100.0%	38.1	1.8	3.4	56.7
Manhattan	12,678	100.0%	17.4	-0-	11.9	70.6
Queens	7,350	100.0%	7.4	-0-	25.1	67.5
Richmond	535	100.0%	-0-	32.7	-0-	67.3
Percent of unavailable vacancies		100.0%	23.5	0.8	15.1	60.6

Sources: U.S. Bureau of the Census, 1981 and 1984 New York City Housing and Vacancy Surveys.

*Excludes "rented, not yet occupied" and "sold, not yet occupied."

rental market. When the owner vacancy rate is disaggregated into its component parts, however, the effect of co-op conversions and neighborhood considerations on vacancy rates becomes clearer.

Although the overall 1984 owner net vacancy rate was 1.47 percent, for conventionally owned houses it was only one-quarter as high, or just 0.40 percent (Table 3.17). In contrast, the vacancy rate for private cooperatives was 5.83 percent.* Richmond's co-op vacancy rate was less than 4 percent, Queens's slightly over 4 percent, Manhattan's 5 percent, and Brooklyn's 7 percent. While the Bronx contained fewer than 9,000 privately financed co-ops, nearly 20 percent were vacant at the time the 1984 Housing and Vacancy Survey was conducted. Indeed, while privately financed cooperatives accounted for just 18 percent of all owner-occupied units in New York City, they accounted for more than three-quarters of all owner vacancies.

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*This high vacancy rate was undoubtedly due in part to the large number of co-op conversions that took place in New York City between 1981 and 1984. Market absorption of conversions takes time, just as does initial rent-up of new rental buildings. Cooperative conversions are analyzed in chapter 8.

Table 3-17. Net vacancy rates in the renter and owner housing stocks, New York City, 1981 and 1984

	Net vacancy rate	
	1981	1984
All renter housing	2.13	2.04
All owner housing	1.14	1.47
Conventionally owned homes	0.58	0.40
State/city assisted cooperatives and condominiums	2.63	0.67
Private cooperatives and condominiums	3.33	5.83
Bronx		19.22
Brooklyn		6.82
Manhattan		5.21
Queens		4.23
Richmond		3.85
Percent of vacant for sale housing by building ownership:		
Conventional houses		20.4
State/city assisted cooperatives and condominiums		2.9
Private cooperatives and condominiums		76.7

Sources: 1981 data from Stegman, p. 67; 1984 data from U.S. Bureau of the Census, New York City Housing and Vacancy Survey.

Appendix III

Anti-Warehousing Laws in Other Cities

Anti-Warehousing Laws in Other Cities

The anti-warehousing laws of Hoboken, Jersey City, Weehawken and West New York N.J., and of Seattle, Wash., are summarized below. The text of these laws follow.

Hoboken

Landlords' Duty. Landlords must rent all units within two months after the end of the preceding tenancy.

If an apartment is still vacant 30 days after a tenant leaves, the landlord must notify Hoboken's Rent Levelling Board. This notification must include the rent charged the preceding tenant and the rent to be charged the next tenant. (No notice is required if the apartment is rented within 30 days of the last tenancy.) The landlord has 30 days after filing the notice to rent the apartment. When he does rent the apartment, the landlord must notify the Rent Levelling Board of the name of the new tenant, and the terms of the tenancy.

Extensions. Landlords can get an extension of the time in which they must rent an apartment if they file an application showing that they intend to reserve the apartment for a family member, or to make improvements to the apartment, or to correct code violations.

A request for a time extension must be submitted to the Rent Levelling Board within 30 days after the time the last tenant leaves. If the Board approves the application, it may grant the landlord time extensions of no more than six months to finish the work that needs to be done and to rent the apartment.

Apartments Covered by Law. The anti-warehousing law applies to all apartments, except those in owner-occupied buildings with four units or less, or in newly constructed buildings being

rented for the first time; units in motels and hotels; and units in buildings in which the owner has filed the first 60-day notice required under New Jersey law to convert the building to a co-operative or condominium.

Penalties for Violation. Owners who violate Hoboken's anti-warehousing law are subject to fines of up to $500 for each unit in violation. Each day an owner is found to have warehoused an apartment is considered a separate violation of the law. Complaints against landlords may be filed by individuals, civic organizations, or the city itself.

Jersey City

Landlords' Duty. Landlords must rent all units within 60 days after the time a tenant leaves. In addition, owners of buildings with five or more units must report to the Jersey City Housing Clinic any vacancy that lasts longer than 10 days. They must also notify the Housing Clinic when they rent the vacant apartment.

Extensions. Landlords can get permission to extend the time in which they must rent an apartment if they file an application with the Housing Clinic showing that they intend to reserve the apartment for a family member, or to make improvements to the apartment, or to correct code violations. If it see fits, the Housing Clinic may grant a landlord an extension of no more than six months.

Apartments Covered by Law. The law applies to all apartments except those in owner-occupied buildings with three units or less; units in newly constructed buildings that are being rented for the first time; hotel or motel units; and units in a building in which the landlord has given the first 60-day notice

required by New Jersey law in order to convert the building to a co-operative or condominium.

Penalties for Violation. Landlords who violate Jersey City's anti-warehousing law may be fined up to $500 for each unit in violation. Each day an owner is in violation of the law constitutes a separate violation. Complaints may be filed by individuals, or by a civic organization or a municipal agency.

Weehawken

Landlords' Duty. Landlords must notify Weehawken's Rent Leveling Board whenever an apartment has been vacant for 30 days, and must "make diligent efforts" to rent all vacant apartments. Such efforts require a landlord to accept as a tenant any person who offers to pay the lawful rent and agrees to any reasonable rental terms. However, a landlord does not have to rent to a person who he can show is likely to engage in conduct that would constitute grounds for eviction, or has failed to supply necessary financial or personal information.

Within five days after a person has offered to rent a vacant apartment, the landlord must notify both the prospective tenant and the Rent Leveling Board whether the applicant has been accepted. If the landlord does not intend to rent the apartment to the applicant, he must give the reason.

The landlord must allow an approved tenant to occupy the apartment no more than 60 days from the time of the tenant's offer to rent.

Apartments Covered by Law. The law applies to all apartments except those located in owner-occupied buildings with three or fewer apartments.

Penalties for Violation. Owners who violate Weehawken's

anti-warehousing ordinance may be fined up to $500, or be jailed for up to 30 days, or both. Each day a landlord is in violation of the law constitutes a separate violation. Complaints against landlords may be filed by the township or by individuals who are aggrieved by a landlord's violation.

West New York

Landlords' Duty. Landlords must register all vacant apartments that remain vacant for 30 days after the end of the prior tenancy. This registration must be sent to the Tenant Relations Office of the Town of West New York, and must include the name of the last tenant and the rent paid by him. The landlord must make "reasonably diligent efforts" to rent the vacant apartment, and must accept a tenant who offers to pay the lawful rent, unless the landlord can show there is "reasonable justification" for rejecting the tenant.

"Reasonable justification" for refusing to rent may exist where the tenant has previously been evicted by a court for nonpayment of rent, or for other cause, or where the tenant does not have enough money to pay the rent.

Within seven days of a tenant's request to rent an apartment, the landlord must notify the Tenant Relations Office whether the applicant is accepted. If the tenant is not accepted, the landlord must state the reason.

Apartments Covered by Law. The law applies to all apartments except those located in owner-occupied buildings that have three or fewer apartments.

Penalties for Violation. Landlords who violate the law may be fined up to $500. Subsequent violations may result in an additional fine of up to $500, and/or imprisonment for up to 45

days.

Seattle

Landlords' Duty. Owners of low-income rental units must make a "good faith effort" to rent them. Evidence of a lack of good faith may exist if the building has a vacancy rate greater than 20 percent; if the landlord has failed to offer a vacant apartment for rent within seven days of the time the unit becomes unoccupied; if the landlord has reduced building services or violated the building code so as to endanger the health or safety of the tenants; and if the landlord has committed or caused vandalism to the building or an apartment.

Apartments Covered by Law. The law covers all low-income rental units in Seattle's downtown and First Hill areas. Low-income rental units are defined as those that rent for less than 30 percent of 50 percent of the median income for the Seattle area.

Penalties for Violation. Landlords who violate Seattle's anti-warehousing law may be fined up to $500 for each day a violation exists. In addition, if the landlord refuses to comply with the law, the court may appoint a receiver to manage and operate the building.

Hoboken ordinance

Sponsored by _____

Seconded by _____

APPROVED AS TO FORM

_____ City Attorney

AN ORDINANCE PROHIBITING THE WITHHOLDING OF CERTAIN RESIDENTIAL UNITS FROM THE RENTAL HOUSING MARKET WITHIN THE CITY OF HOBOKEN.

WHEREAS, the City of Hoboken has previously determined that an emergency exists in the city with respect to the availability of affordable rental housing; and

WHEREAS, the governing body of the City of Hoboken does hereby declare that the emergency continues and grows more severe in the city of hoboken, as a result of the elimination of a substantial portion of the existing affordable rental housing stock, and insufficient new construction of affordable rental housing, which have caused a substantial and increasing shortage of rental housing affordable by families of low and moderate income; and

WHEREAS, said governing body has determined that this emergency has been exacerbated by reason of the withholding by owners of available affordable housing units from the rental market in order to increase the value of their property at the expense of persons desiring to rent such housing units and which actions are determined by said governing body to be unwarranted and to cause severe economic and physical hardships to tenants, and are adversely affecting the health, safety and general welfare of the citizens of the City of Hoboken, thereby warranting legislative action by this governing body; and

WHEREAS, the governing body finds that this ordinance is necessary to protect the rights of tenants during the present affordable rental housing crisis in the City of Hoboken.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Hoboken, New Jersey, as follows:

1. The owner of any dwelling unit, other than those exempted below, shall be subject to the provisions of this ordinance.

A TRUE COPY OF A ~~RESOLUTION~~ ORDINANCE ADOPTED BY THE COUNCIL OF THE CITY OF HOBOKEN, N. J. AT A MEETING HELD ON

4-17-86

_____

CITY CLERK.

The following are exempt from the provisions of this ordinance:

a) Units in owner-occupied buildings.

b) Units in newly constructed buildings which are being rented for the first time. After the first rental, such units will be subject to the provisions of this ordinance.

c) Units where the owner is participating in an affordable housing project approved by the Community Development Agency of Hoboken.

d) Units in a building whose owner has transmitted his first sixty-day notice of his intentions to convert the building into a condominium or co-opertive and his full plan of conversion to the City Clerk pursuant to N.J.S.A. 2A:18-61.8.

e) Units in motels and hotels.

2. All such units shall be rented and occupied by a new tenant within 2 months after the end of the preceding tenancy, which shall be defined as the last day of residence by the preceding tenant or tenants, except where this requirement has been waived by the Rent Levelling Board under the provisions of Sec. 5 below, in which event the unit shall be rented and occupied within the time period specified in the waiver.

3. The owner of any such unit which is still vacant thirty (30) days after the end of the preceding tenancy shall notify the Rent Levelling Board within five (5) days in writing of said continuing vacancy.

Said notification shall include the following information:

a) The address, and location within the building, of the unit;

b) The rent charged the preceding tenant and rent to be charged the proximate incoming tenant.

c) The name, address, and telephone number of the owner.

d) The name, address, and telephone number of the owner's agent and/or resident manager, if any.

No notification shall be required with respect to any unit rented and occupied within thirty (30) days or less from the end of the preceding tenancy.

4. Within thirty (30) days after submission of the report required under Sec. 3 above, the landlord shall notify the Rent Levelling Board that the unit has been rented and occupied, with the names of the new tenant or tenants, and the terms of the tenancy. Failure to have the unit rented and occupied within sixty (60) days after the end of the preceding tenancy, except where a waiver has been granted by the Rent Levelling Board, shall be considered a violation of this ordinance, and subject to the penalties set forth in Sec. 7 below.

5. A landlord may seek a waiver of the requirement to rent the unit within sixty (60) days of the end of the preceding tenancy where the condition of the unit or other special circumstances make rental within such time period impossible. In order to obtain a waiver, the landlord must submit a request in writing to the Rent Levelling Board, within thirty (30) days or less from the end of the preceding tenancy, setting forth with specificity:

a) The reasons that the unit cannot be rented within such time period;

b) The steps the landlord shall take to remedy the conditions that make it impossible to rent the unit; and

c) The date by which the unit shall be rented and occupied.

Full documentation, such as code violation reports,

engineering or inspection reports, etc., shall be provided by the landlord. Any waiver granted by the Board under this section shall specify a date by which the unit shall be rented and occupied. The Board may extend that date upon written request of the landlord, but may not provide more than two such extensions, of not more than sixty (60) days each.

In no circumstance shall any waiver, including extensions, exceed six (6) months from the time of granting of such waiver.

The following circumstances shall constitute grounds for granting of a waiver by the Rent Levelling Board:

1. An owner wishes to maintain a vacant unit in order to reserve said unit for a family member. The owner shall provide in the waiver request full documentation, such as the name of the future tenant and the date of occupancy.

2. An owner wishes to maintain a vacant unit in order to improve the conditions of said unit. The owner shall provide full documentation in the waiver request, such as up-to-date building and housing inspection reports, improvement plans, all related permits, and the date by which the unit shall be rented and occupied.

3. An owner maintains a vacant unit in order to correct code violations in said unit. The owner shall provide in the waiver request full documentation such as code violations reports, correction plans, permits and the date by which the unit shall be rented and occupied.

6. Any individual affected by the action or inaction of an owner of a dwelling unit subject to the provisions of this Ordinance, any civic organization, and any appropriate municipal agency, may file a complaint of violation of this Ordinance with the Hoboken Municipal Court.

7. A first violation of Section two (2) of this ordinance

or the conditions upon which a waiver has been granted by the Board shall be punishable by a fine of not more than $500.00 for each unit in violation. Subsequent violations shall be punishable by a fine of not less than $100.00 or more than $500.00. Each day during which an owner is in violation of Section 2 of this ordinance or the conditions upon which a waiver has been granted shall constitute a separate violation hereunder.

8. A violation of any other provision of this Ordinance, where there has been no finding of a violation of Sec. 2 of this Ordinance, shall be punishable by a fine not to exceed $100.00 for each unit found in violation, for each day the owner is found in violation.

9. Immediately upon passage of this Ordinance, the Rent Levelling Board shall mail a copy of the Ordinance as adopted to all known owners of property subject to the provisions of this Ordinance, and shall further generally inform the public with respect to the terms and provisions of the Ordinance.

10. Any landlord of any unit which has been vacant thirty (30) days or more from the end of the preceding tenancy as of the effective date of this Ordinance shall be required to file the notification required under Sec. 4 of this Ordinance within fifteen (15) days of the effective date of this Ordinance.

11. If any provision of this Ordinance is declared invalid, such invalidity shall not affect other provisions of this ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

12. This ordinance, and its provisions, is intended to avoid any conflict with state statutes regulating the possession of apartments and regulating the conversion of rental units into other forms of ownership. If any ambiguity arises with respect to such conflict, the ordinance should be construed to carry out its purpose to avoid such conflict.

13. This ordinance will take effect immediately upon passage and publication as required by law.

PASSED:

President of the Council

APPROVED:

Mayor

City Clerk

Sponsored by Joseph DeGuitare

Seconded by Ellen A. Canning

AN ORDINANCE TO AMEND AND SUPPLEMENT AN ORDINANCE ENTITLED "AN ORDINANCE PROHIBITING THE WITHHOLDING OF CERTAIN RESIDENTIAL UNITS FROM THE RENTAL HOUSING MARKET WITHIN THE CITY OF HOBOKEN" AND TO REPEAL SECTION 9 OF SAID ORDINANCE.

THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 1 (a) shall read as follows:

Units in owner-occupied buildings where there are four units or less and one of these units is owner-occupied.

Section 2. Section 9 of this ordinance is hereby repealed.

Section 3. This ordinance shall take effect as provided by law.

PASSED: September 7, 1995

President of the Council

APPROVED: September 12, 1995

Thomas F. Vezzetti
Mayor

City Clerk

A TRUE COPY OF A ~~RESOLUTION~~ ADOPTED BY THE COUNCIL OF THE CITY OF HOBOKEN, N. J. AT A MEETING HELD ON

9-17-96

CITY CLERK

EXHIBIT A 60

Agenda No. 3.M 1st Reading
Agenda No. 4.E. 2nd Reading & Final Passage

ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE

C-388

TITLE:

AN ORDINANCE SUPPLEMENTING CHAPTER 13 (HOUSING) OF THE JERSEY CITY CODE PROHIBITING THE WITHHOLDING OF CERTAIN RESIDENTIAL UNITS FROM THE RENTAL HOUSING MARKET WITHIN THE CITY OF JERSEY CITY

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, the City of Jersey City has previously determined that an emergency exists within the City with respect to the availability of affordable rental housing; and

WHEREAS, the governing body of the City of Jersey City does hereby declare that the emergency continues and grows more severe in the City of Jersey City, as a result of the elimination of a substantial portion of the existing affordable rental housing stock, and insufficient new construction of affordable rental housing, which have caused a substantial and increasing shortage of rental housing affordable by families of low and moderate income; and

WHEREAS, said governing body has determined that this emergency has been exacerbated by reason of the withholding by owners of available affordable housing units from the rental market in order to increase the value of their property at the expense of persons desiring to rent such housing units and which actions are determined by said governing body to be unwarranted and to cause severe economic and physical hardships to tenants, and are adversely affecting the health, safety and general welfare of the citizens of the City of Jersey City, thereby warranting legislative action by this governing body; and

WHEREAS, the governing body finds that this ordinance is necessary to protect the rights of tenants during the present affordable rental housing crisis in the City of Jersey City.

NOW THEREFORE BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

A. The following supplements to Chapter 13 (Housing) of the Jersey City Code are adopted.

4-E

ARTICLE XXIV. PROHIBITION AGAINST THE WITHHOLDING OF CERTAIN RESIDENTIAL UNITS FROM RENTAL HOUSING MARKET.

Sec. 13-156. Exempt dwellings.

(a) The owner of any dwelling unit, other than those exempted below, shall be subject to the provisions of this ordinance.

(b) The following are exempt from the provisions of this ordinance:

(1) Units in owner-occupied dwellings where there are three units or less and one of the units is owner-occupied.

(2) Units in newly-constructed buildings which are being rented for the first time. After the first rental, such units will be subject to the provisions of this ordinance.

(3) Units in a dwelling where the owner has transmitted his first sixty (60) day notice of his intention to convert the building into a condominium or cooperative and his full plan of conversion to the City Clerk pursuant to N.J.S.A. 2A:18-61.8, so long as the conversation plan is not abandoned.

(4) Units in dwellings, the owners of which have transmitted notice under N.J.S.A. 2A:18-61.1(g)(1) or (h). This exemption shall remain in effect so long as the owner is in compliance with the provisions of the section under which notice was given.

(5) Units in hotels or motels.

Sec. 13-157. Requirements.

All such units shall be rented and occupied by a tenant within sixty (60) days after the end of the preceding tenancy, which shall be defined as the last day of residence by the preceding tenant(s), except where an extension has been granted by the Housing Clinic under the provisions of §13-158(e) below, in which event the unit shall be rented and occupied within the time period specified in the extension. Failure to comply with the requirements of §13-158(e) shall be considered a violation of this ordinance and subject the owner to the penalties set forth in Sec. 13-159 below.

4.E.

Sec. 13-158. Extension of time period.

(a) An owner may apply for an extension of the time period set forth in §13-157, where the condition of the unit or other special circumstances make rental within such time period impossible. In order to obtain an extension, the owner must submit an application in writing to the Housing Clinic, within thirty (30) days or less from the date the preceding tenancy ended, setting forth with specificity:

(1) The reasons that the unit cannot be rented within such time period;

(2) The steps the owner shall take to remedy the conditions that make it impossible to rent the dwelling unit; and

(3) The date by which the dwelling unit shall be rented and occupied.

(b) The owner shall provide the Housing Clinic with all documentation necessary to support the application, including but not limited to code violation reports, engineering or inspection reports, copies of advertisements, etc.

(c) Any extension granted by the Housing Clinic shall specify the date by which the dwelling unit must be rented and occupied. Additional extensions may be sought by the owner, but the total extension permitted in the aggregate shall not extend beyond six (6) months from the date the previous tenancy ended, except as provided in §13-158(e) below.

(d) The following circumstances shall constitute grounds for the granting of an extension pursuant to §13-158(a) above by the Housing Clinic:

(1) An owner wishes to reserve a vacant dwelling unit for a family member. The owner shall provide in the extension application full documentation including the name of the future tenant, the family relationship and the date of occupancy.

(2) Any owner desires to maintain a dwelling unit vacant in order to improve the conditions of said dwelling unit. The owner shall provide full documentation in the application, including up-to-date building and housing inspection reports, improvement plans, all related required permits, and the date by which the unit shall be rented and occupied.

(3) An owner maintains a vacant dwelling unit in order to correct code violations in said unit. The owner shall provide in the application full documenta-

TITLE:

4.E.

tion such as code violation reports, correction plans, permits, and the date by which the dwelling unit shall be rented and occupied.

(e) Extension of the time period provided in §13-157 of this ordinance beyond the maximum time prescribed by §13-158(d) above shall be only granted upon a clear and convincing showing by the owner that a good faith effort has been made to rent the dwelling unit at the legal rent, and that no tenant can be found. In this circumstance, the maximum extension granted beyond the maximum time provided in §13-158(d) above shall be sixty (60) days, renewable upon a new showing by the owner.

Sec. 13-159. Violations.

(a) Any individual affected by the action or inaction of an owner of a dwelling unit subject to the provisions of this ordinance, any civic organization, and any appropriate municipal agency, may file a complaint of violation of this ordinance with the Housing Clinic. If the Housing Clinic finds probable cause that a violation has occurred, the Housing Clinic shall file a complaint in the Municipal Court.

(b) A first violation of §13-157 of this ordinance or the conditions upon which an extension has been granted by the Housing Clinic pursuant to §13-158 of this ordinance, shall be punishable by a fine of not more than Five Hundred ($500.00) Dollars for each unit in violation. Subsequent violations shall be punished by a fine of not less than One Hundred ($100.00) Dollars or more than Five Hundred ($500.00) Dollars. Each day during which an owner is in violation of §13-157 or the conditions upon which a waiver has been granted by the Housing Clinic pursuant to §13-158 of this ordinance shall constitute a separate violation hereunder.

Sec. 13-160. Conflicts with State Law.

(a) This ordinance is intended and shall be construed to avoid any conflict with state law, in particular but not limited to state statutes regulating the possession of apartments and regulating the conversion of rental units into other forms of ownership.

(b) If any provision of this ordinance is declared invalid, such invalidity shall not affect other provi-

sions of this ordinance which can be given effect, and, to this end, the provisions of this ordinance are declared to be severable.

4.E. B. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

C. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.

D. This ordinance shall take effect at the time and in the manner as provided by law.

E. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted.
For purposes of advertising only, new matter is indicated by bold face and repealed matter by italic.

TF/ph
1/15/87

...ED to be a true copy of
...DINANCE adopted by the
Municipal Council of the City of
Jersey City at its meeting of
FEB 11 1987
Thomas F. Smith
City Clerk

APPROVED AS TO LEGAL FORM
Corporation Counsel

APPROVED

APPROVED

Weehawken ordinance

TOWNSHIP OF WEEHAWKEN
HUDSON COUNTY, NEW JERSEY
ORDINANCE NO. 10 -1986

AN ORDINANCE PROHIBITING THE WITHHOLDING
OF CERTAIN RESIDENTIAL APARTMENT UNITS
FROM THE RENTAL MARKET
IN THE TOWNSHIP OF WEEHAWKEN

WHEREAS, the Township of Weehawken has previously determined that an emergency exists in the Township with respect to the rental of housing space; and

WHEREAS, the governing body of the Township of Weehawken does hereby declare that emergency now exists in the Township of Weehawken with respect to the rental of housing space now subject to rent control, which emergency has been created, in part, by a deterioration of a substantial portion of the existing housing stock, insufficient new housing construction, increased cost of construction and finance, and growing inflation, all of which have caused a substantial and increasing shortage of rental housing accommodations for families of low and moderate income; and

WHEREAS, the said governing body has determined that this emergency has been exacerbated by reason of the withholding by owners of available housing space from the rental market in order to increase the value of their property at the expense of persons desiring to rent such housing space and in order to circumvent the protections granted to persons in possession of rental housing space upon conversion of the property to the condominium or cooperative form of ownership, and which actions are determined by said governing body to be unwarranted and causing severe economic hardships upon tenants and are adversely effecting the health, safety and general welfare of the citizens of the Township of Weehawken, warranting legislative action by the governing body; and

WHEREAS, this Ordinance is necessary to protect the rights of tenants during the existing housing shortage crisis in the Township of Weehawken;

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Weehawken, Hudson County, New Jersey, as follows:

1. The owner of any dwelling unit which is subject to the provisions of the Weehawken Rent Leveling Ordinance, as amended from time to time, at any time when such dwelling unit has been vacant for a period of thirty (30) days shall, within ten (10) days thereafter, notify the Weehawken Rent Leveling Board in writing of the fact of such vacancy, the identity of the owner, the adress and apartment number of the vacant dwelling unit, and the date upon which it became vacant.

2. At or before the time any dwelling unit described in Section 1 of this Ordinance shall become vacant, and continuing during the period of such vacancy, the owner shall make diligent efforts to rent the same.

3. The owner shall accept as a tenant for immediate occupancy of such dwelling unit any person who offers to pay the lawful rent and any proper security deposit which may be required for the apartment and agrees to any reasonable rental terms; provided that:

(a) The owner may refuse to accept any such person as a tenant where he is able to establish clearly and convincingly that the prospective tenant:

i. Would be likely to engage in conduct which would constitute one of the good cause grounds for eviction set forth in N.J.S.A. 2A:18-61.1, except those contained in subsections g, h, k, or l as presently constituted; or

ii. Has failed to comply with the reasonable requests of the owner for financial or other relevant personal information which is necessary for the owner to make an informed decision as to the suitability of the person as a prospective tenant, within a reasonable time after request therefor; and

(b) The owner may offer any such person a tenancy in such dwelling unit with occupancy to begin on a date which is no more than sixty (60) days from the date such prospective tenant offers to rent the dwelling unit, where the owner is able to establish clearly and convincingly that the delay in occupancy is necessary for the purpose of making repairs or improvements to the dwelling unit, which repairs or improvements cannot practicably be made while a person is in possession and occupancy of the dwelling unit.

4. Within five (5) days after a person has offered to rent a vacant dwelling unit which is subject to the provisions of this Ordinance and such person has complied with all reasonable requests of the owner for relevant financial or personal information, the owner shall notify that person and the Weehawken Rent Leveling Board in writing whether such person is accepted for the tenancy, rejected or accepted for a future occupancy and, in the latter two cases, the owner shall also set forth in the notification the specific reasons therefor and, in the last case, the date occupancy is to begin.

5. Any person aggrieved by the action or inaction of an owner of a dwelling unit subject to the provisions of this Ordinance may bring the matter before the Municipal Court on a complaint for violation of this Ordinance.

6. It shall be the obligation of any person required to give written notice under this Ordinance to ensure that all parties required to, actually receive such notice.

7. A violation of any provision of this Ordinance shall be punishable by a fine not to exceed $500.00, imprisonment for a period up to thirty (30) days, or both. Each day during which an owner is in violation of any of the provisions of this Ordinance shall constitute a separate offense hereunder.

8. This Ordinance shall also be applicable to all apartments which are vacant on the effective date of this Ordinance and which either have been vacant for a period of at least thirty (30) days at that time or which remain vacant and later reach that thirty (30) day vacancy period. A Landlord who would be in violation of this Ordinance as of its effective date shall have fifteen (15) days to comply with the provisions hereof.

9. If any provisions of this ordinance or the application of such provision to any person or circumstances is declared invalid, such invalidity shall not effect other provisions or applications of this Ordinance which can be given effect and to this end, the provisions of this Ordinance are declared to be severable.

10. This Ordinance is to take effect immediately upon passage and publication as required by law.

INTRODUCED: February 27, 1986
PASSED & ADOPTED: March 13, 1986

West New York ordinance

HEARING & FINAL ADOPTION

JAN 15 1987

TOWN OF WEST NEW YORK

HUDSON COUNTY, N.J.

ORDINANCE NO. 1753

AN ORDINANCE AMENDING ORDINANCE NO. 1706 ENTITLED "AN ORDINANCE PROHIBITING THE WAREHOUSING OF RESIDENTIAL APARTMENT UNITS IN THE TOWN OF WEST NEW YORK."

WHEREAS, the above ordinance and its provisions only prescribes certain conduct by the landlords of multi-family dwellings, and

WHEREAS, it is the intent of this amendment that the management agent of said multi-family dwellings, if any, shall have dual responsibility with the landlord to follow the provisions of said ordinance.

NOW, THEREFORE, BE IT RESOLVED as follows:

Ordinance No. 1706 is amended to read as follows:

WHEREAS, the Town of West New York has a Rent Control Ordinance duly enacted by the Mayor and Board of Commissioners that provides for reasonable increases in rents, and

WHEREAS, the Rent Control Ordinance is necessary to protect the rights of tenants and landlords during the existing housing shortage crisis in the Town of West New York, and

WHEREAS, the said housing shortage crisis is magnified when landlords withhold an apartment from the rental market in the Town of West New York, which practice is commonly known as "warehousing".

NOW, THEREFORE, BE IT ORDIANED as follows:

1. Every landlord and/or managing agent of a multi-family rental dwelling (herein defined as any dwelling with four or more rental apartments, whether or not owner occupied, or any dwelling with two or three rental apartments that is not owner occupied) shall register any apartment unit that is not rented within 30 days after the termination of a prior tenancy with the Tenant Relations Office of the Town of West New York, which registration shall be in writing, by certified mail, return receipt requested. The registration shall include the following:

(1) The name, address, and telephone number of the landlord and/or managing agent.
(2) The name, address, and telephone number of the superintentant for the building in question.

(3) The total number of apartment units in the building.

(4) The apartment number, number of rooms, and monthly rent of the vacant apartments, the name of the tenant that has vacated the apartment and the rent he was paying when he vacated.

(5) Any other information the Tenant Relations Office deems appropriate.

2. Upon such registration of an apartment, the landlord and/or managing agent shall make reasonably diligent efforts to rent the vacant apartment. The landlord and/or managing agent shall accept a tenant who offers to pay the lawful rent for the apartment and shall be permitted to immediately occupy the apartment unless the landlord and/or managing agent can demonstrate reasonable justification for not accepting the applicant as a tenant or a reasonable justification for not permitting the applicant to immediately occupy the apartment.

3. "Reasonable justification" for not accepting the applicant as a tenant is herein defined as (1) Proof by the landlord and/or managing agent that the applicant has been evicted by a court of competent jurisdiction on prior occasions for non-payment of rent or for cause as defined by the State Eviction Law or (2) Proof that the tenant applicant does not have the financial resources to pay the monthly rental, (3) Any other significant reason that would make it clearly unfair or improper for the landlord and/or managing agent to rent the apartment to the applicant.

4. "Reasonable justification" for not permitting the applicant to immediately occupy the apartment is herein defined as (1) Proof by the landlord and/or managing agent that the applicant has failed to pay the initial monthly rent and security deposit or (2) Proof that the apartment is undergoing repairs or rehabilitation, which repair or rehabilitation shall in no case take more than 45 days from the termination of the prior tenancy or (3) Any other significant reason that would make it clearly unfair or improper for the applicant to immediately occupy the apartment.

5. There shall be a presumption that all applicants are acceptable as tenants for the vacant apartment and that all apartments are immediately available for occupancy and it shall be the burden of the landlord and/or managing agent to overcome the presumption.

6. Within seven (7) days of a tenants request to a landlord and/or managing agent to rent a vacant apartment, the landlord and/or managing

agent shall notify the Tenant Relations Office in writing, by certified mail, return receipt requested, that the applicant is accepted as a tenant or not accepted as a tenant, and if not accepted as a tenant, the reasonable justification for such non-acceptance. All decisions by a landlord and/or managing agent that a tenant is not acceptable or that an apartment is not immediately available for occupancy shall be subject to review by the Tenant Relations Office of the Town of West New York at a hearing on notice to all parties. At the conclusion of said hearing or no later than 30 days thereafter, the Tenant Relations Office shall determine whether the landlord and/or managing agent has sustained his burden of proof. In the event the landlord and/or managing agent has not sustained his burden of proof, said finding may be considered by the Municipal Court on a complaint for a violation of this ordinance. In addition, the applicant shall be permitted to immediately occupy the apartment if it has not been rented to another.

7. A violation of any provision herein shall be punishable by a fine not to exceed $500.00. Violations of this ordinance shall include a failure to register under Section One or a finding that a landlord and/or managing agent has no reasonable justification for not accepting an applicant or allowing his immediate occupancy of the apartment pursuant to Sec. 2, 3 and 4 or a failure to notify the Tenant Relations Office pursuant to Section 6.

8. Any landlord and/or managing agent who is convicted of a second violation of the provisions herein, whether the same provision as the first violation or for violating another provision, shall be subject to a fine not to exceed $500.00 and/or imprisonment for a period not to exceed 45 days, which shall be in addition to any other penalty herein.

9. The provisions of this Ordinance shall be effective upon adoption and publication as provided by law.

10. The provisions herein are separable. The invalidity of a provision shall not affect the continuing validity of the other provisions herein.

TOWN OF WEST NEW YORK

HUDSON COUNTY, N.J.

ORDINANCE NO. 1776

AN ORDINANCE AMENDING ORDINANCE #1753 ENTITLED " AN ORDINANCE AMENDING ORD. NO. 1706 ENTITLED "AN ORDINANCE PROHIBITING THE WAREHOUSING OF RESIDENTIAL APARTMENT UNITS IN THE TOWN OF WEST NEW YORK."

Section 1. Paragraph 1 of said Ordinance is amended to read as follows:

1. Every landlord and/or managing agent of a multi-family rental dwelling (herein defined as any dwelling with four or more rental apartments, whether or not owner occupied, or any dwelling with two or three rental apartments that is not owner occupied) shall register any apartment unit that is not rented and occupied by a bona-fide tenant within 30 days after the termination of a prior tenancy with the Tenant Relations Office of the Town of West New York, which registration shall be in writing, by certified mail, return receipt requested. The registration shall include the following:

(1) The name, address, and telephone number of the landlord and/or managing agent.
(2) The name, address, and telephone number of the superintendant for the building in question.
(3) The total number of apartment units in the building.
(4) The apartment number, number of rooms, and monthly rent of the vacant apartments, the name of the tenant that has vacated the apartment and the rent he was paying when he vacated.
(5) Any other information the Tenant Relations Office deems appropriate.

Bona-fide Tenant shall mean a tenant who intends to and does actually physically occupy the subject apartment and pays the lawful rent for said apartment to the landlord.

Section 2. Paragraph 2 of said ordinance is amended to read as follows:

2. Upon such registration of an apartment, the landlord and/or managing agent shall make reasonably diligent efforts to rent the vacant apartment to a bona-fide tenant. The landlord and/or managing agent shall accept a tenant who offers to pay the lawful rent for the apartment and shall be permitted to immediately occupy the apartment unless the landlord and/or managing agent can demonstrate reasonable justification for not accepting the applicant as a tenant or a reasonable justification for not permitting the applicant to immediately occupy the apartment.

Section 3. Paragraph 7 of said ordinance is amended to read as follows:

7. A violation of any provision herein shall be punishable by a fine not to exceed $500.00. Violations of this ordinance shall include but not be limited to (1) a failure to register under Section One or (2) a finding that a landlord and/or managing agent has no reasonable justification for not accepting an applicant or allowing his immediate occupancy of the apartment pursuant to Sec. 2, 3 and 4 or (3) a failure to notify the Tenant Relations Office pursuant to Section 6 or (4) leasing an apartment to someone other than a bona-fide tenant.

Section 4. The provisions of this amendment shall be effective upon adoption and publication as provided by law.

INTRODUCED: APRIL 15th, 1987

MAYOR ANTHONY M. DE FINO
COMMISSIONER JAMES F. LANGAN
COMMISSIONER LAWRENCE RICCARDI
COMMISSIONER MARIO R. HERNANDEZ
COMMISSIONER KENNETH R. BLANE
BOARD OF COMMISSIONERS

ATTEST: RAYMOND F. GABRIEL
TOWN CLERK

N O T I C E

THE FOREGOING ORDINANCE WAS ADOPTED FOR FIRST READING BY THE MAYOR AND BOARD OF COMMISSIONERS OF WEST NEW YORK, N.J. ON APRIL 15th, 1987, AND ORDERED PUBLISHED AND WILL BE FURTHER CONSIDERED BEFORE FINAL PASSAGE AT A PUBLIC HEARING ON MAY 20th, 1987 AT 7:00 P.M. AT THE COMMISSION CHAMBERS, MUNICIPAL BUILDING, WEST NEW YORK, NEW JERSEY.

RAYMOND F. GABRIEL
TOWN CLERK

Seattle ordinance

7-18-85

ORDINANCE 112383

AN ORDINANCE relating to housing, establishing minimum maintenance and occupancy standards for rental housing in the downtown area; creating a Downtown Housing Maintenance Account to provide financing for maintenance and rehabilitation of downtown rental housing; establishing a process for the appointment of receivers for downtown rental housing that is purposefully left unoccupied; and providing penalties for violations.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1.

Title. This ordinance shall be cited as the "Downtown Housing Maintenance Ordinance".

Section 2.

A. Findings. The Seattle City Council hereby finds:

1. Low-income housing in downtown and adjacent lower First Hill is a scarce and diminishing resource. There has been a net loss of more than 15,000 housing units in the downtown since 1960.

2. There exists an extreme shortage of low-income rental housing in the downtown area, resulting in a negligible vacancy rate for habitable low-income housing.

3. Many low-income tenants are unable to locate rental housing of any kind. These homeless persons are increasingly seeking housing in already overcrowded emergency shelters, and when such shelters are full, finding themselves on the city's streets.

4. Due to the drastic reduction in public funding, particularly federal funding, allocated to low-income housing since 1980, there are very few resources available to preserve or add new units to the existing supply of low-income housing.

5. Existing rental units in the downtown and adjacent lower First Hill constitute most of the remaining low-income rental housing in the City. The number of such units downtown is diminishing as a result of increased pressure for more intensive development downtown. Plans for major downtown development adjacent to lower First Hill have also put increased pressure on the low-income rental housing on lower First Hill.

6. Frequently, development speculation results in the premature closure of habitable existing buildings and the withdrawal of low-income rental units from the market long before such closure would be needed for any physical redevelopment of such buildings' sites.

7. There exists, especially in the downtown and adjacent First Hill a substantial number of abandoned or vacant residential units which create blight and constitute a danger to public health, safety and welfare.

B. Buildings which are vacant and not carefully secured and maintained frequently attract homeless persons seeking temporary shelter. This unsupervised use of these unheated buildings results in a fire hazard to the buildings and to the residents of nearby structures.

9. Because of the conditions described above, there exists in the City a housing emergency. This necessitates that existing low-income rental housing in the downtown and adjacent lower First Hill be both maintained and offered for rent.

B. Purpose.

This ordinance, therefore, is enacted to supplement the City's existing housing and building safety codes and;

1. to reduce blight and threats to public health, safety and welfare by requiring that low-income units be both maintained and offered for rent, where feasible;

2. to relieve the effects of the City's housing emergency by preventing the premature withdrawal of units from the rental market;

3. to maximize the use of existing scarce low-income housing resources;

4. to provide public financial and management support, where appropriate, to assist owners to maintain low-income units in safe and habitable condition and available for occupancy;

5. to respect the owner's right to use and control private property, consistent with the above purposes and constitutional protections.

Section 3. Definitions.

A. Director:	The Director of the Department of Construction and Land Use or the Director's designee.
B. Downtown:	That portion of the City betweeen the waterfront and Interstate Five and between Royal Brougham Way and Denny Way.
C. Lower First Hill:	That portion of the City between Interstate Five and Boren Avenue and between Pike Street and James Street.
D. Low-income Rental Unit:	All rental units which have been rented at or below 30% of 50% of the median income for comparably sized households in the Seattle Everett Standard Metropolitan Statistical Area as defined by the United States Department of Housing and Urban Development at any time during the two year period prior to an inspection or complaint instituted under this Ordinance. Household size for a SRO or studio unit shall be deemed to be one person, for a one bedroom unit shall be deemed to be two persons, and for a two bedroom unit shall be deemed to be three persons.

E. Owner:	Any person who, alone or jointly, has title to or an ownership interest in any building, with or without actual possession thereof, including any person who as agent, or executor, administrator, trustee, or guardian of an estate has charge, care, or control of any building.
F. Person:	Any individual, firm, corporation, association or partnership and its agents or assigns.
G. Rental Unit:	Any dwelling unit, house-keeping room, or guest room as defined in the Seattle Housing Code (Chapter 22.204 of the Seattle Municipal Code) which has been occupied by tenants pursuant to rental agreements, oral or written, express or implied.
H. SRO (Single Room Occupancy)	An existing housing unit with one main sleeping and living room of at least seventy (70) square feet. Such housing unit may also include a kitchen niche or cooking facilities and/or a private bath or may share common bathroom facilities and/or cooking facilities.

Section 4. Applicability.

The provisions of this ordinance shall apply to all low-income rental units if such rental units are situated in buildings located downtown or in lower First Hill and if such buildings contained any occupied rental units on or after November 5, 1984.

Section 5. Duty to Rent Habitable Low-income Rental Units.

A. Owners of habitable low-income rental units or of low-income rental units that can feasibly be made habitable shall make a good faith effort to rent all such units.

B. An owner's failure or refusal to make such a good faith effort to rent shall constitute a violation of this ordinance.

C. In determining whether an owner is failing or refusing to make a good faith effort to rent habitable low-income rental units or low-income rental units that can feasibly be made habitable, the Director may consider any actions by the owner which are inconsistent with keeping such units rented. Evidence of a lack of good faith may include, but shall not be limited to, the following:

1. maintaining a building vacancy rate in excess of twenty per cent;

2. failing to offer an unoccupied unit for rent within seven days of the unit becoming unoccupied, except under the circumstances provided for in Section 10;

3. offering units for rent at a rental rate which substantially exceeds prevailing rents for comparable rental units;

4. significantly reducing building services;

5. changing rules, regulations, terms or conditions of tenancy so as to substantially and detrimentally affect the rights and obligations of tenants or prospective tenants;

6. willfully or wantonly failing to comply with applicable codes with respect to the low-income rental units or building, the violation of which substantially endangers or impairs the health or safety of the occupants;

7. committing or causing vandalism or the intentional destruction of a rental unit or building;

8. knowingly permitting a tenant to commit waste or to vandalize a rental unit.

Section 6. Duty to Repair Low-income Rental Units.

A. Owners of low-income rental units shall repair such units when such units can feasibly be made habitable. A unit can feasibly be made habitable if, after consideration of variances, deferrals and extensions of time for compliance as provided for in Section 7 below, the cost of the repairs necessary to make the unit habitable does not exceed the amount which the owner may be required to contribute as provided in Subsections B, C, and D together with the amount to be contributed by the City.

B. Except as provided in Subsection D below the owner's contributic to the cost of repairs necessary to make a low-income rental unit habitable shall not exceed $2,000 per low-income rental unit for any three-year period and the total repair cost of any low-income rental unit under this subsection shall not exceed $4,000 per low-income rental unit for any three-year period.

C. In determining the cost of repairing a low-income rental unit, the following rules shall apply:

1. The cost of repairs to common areas or building systems shall be allocated to all the low-income rental units in the building which are required to be offered for rent, not solely to low-income rental units which are vacant or not habitable; provided that, if the shared building systems and/or common area costs allocated to one or more units would cause those units to exceed the maximum total stated above, the excess allocated shared costs may be reallocated among the remaining units required to be offered for rent to the extent that such reallocation does not cause the total repair costs of such remaining units to exceed the maximum cost stated in Subsection B above.

2. The unit-specific costs of repairing low-income rental units shall be allocated to specific units.

3. Costs of all capital repairs shall be included in calculating the owner's maximum contribution over a three-year period. The costs of ordinary maintenance shall not be included. For the purposes of this section, all repairs which are ordered to remedy code violations upon the first inspection of a rental unit under this ordinance shall be deemed capital repairs; during subsequent inspections capital costs for repairs to correct code violations shall be counted only if the Director determines that such repairs are not ordinary maintenance.

4. Any individual unit whose total unit-specific and allocated shared repair costs exceed the maximum allowed by this Ordinance shall be determined to be not feasible to repair.

D. The owner's required contribution to the repair of a unit shall be unlimited to the extent that the unit is not habitable because the owner has:

1. willfully or wantonly failed to comply with applicable building and safety codes; or

2. committed or caused vandalism or the intentional destruction of any rental unit in the building; or

3. knowingly permitted a tenant to commit waste or to vandalize a rental unit.

Section 7. Variances, Deferrals, and Extended Time for Compliance.

A. In specific buildings containing low-income rental units, the Director may authorize under conditions specified in subsections B and C the following types of departure from the standards and requirements of Sections 4.02 through 4.16 of the Housing Code (Chapter 22.206 of the Seattle Municipal Code):

1. A variance;

2. A deferral from compliance for up to three years, with the possibility of one renewal for up to an additional three years;

3. extended time for compliance, with repair work scheduled over a period not to exceed eighteen months, provided that such schedule is arranged to minimize as much possible the amount of time a unit is not available for occupancy.

B. The Director may grant the departures authorized by this section if he determines that both of the following conditions or circumstances exist:

1. A literal intepretation and strict application of the standards and requirements would result in an undue or unnecessary hardship, other than solely a financial hardship, and would adversely affect the preservation and enjoyment of a substantial property right of the owner or tenant of the subject building; and

2. Because of the conditions or circumstances applying to the subject building or to the occupancy thereof, the departure will not be materially detrimental or injurious to the safety, health, or general welfare of the occupants thereof, or of neighboring property or occupancies or of the public.

C. In addition, in determining whether or not any departure from the requirements of the Housing Code is appropriate and, if so, whether to grant a variance, a deferral, or extended time for compliance, the Director shall consider, among others, the following factors:

1. the remaining useful life of the unit or building and the length of time it is likely to be available for low income occupancy;

2. how materially the departure would affect the living conditions of the tenants;

3. the permanency of the condition of the item, unit, structure, or system for which the departure is sought and the degree to which it might deteriorate over the period for which the departure is sought;

4. the difficulty of bringing the item, unit, structure or system into compliance if the departure is not granted.

D. Examples of items which might be varianced, deferred or given extended time for compliance are shown below. Since no two buildings are ever alike and the nature and extent of violations could change over short periods of time, these examples would not apply in all cases. The examples stated below are for illustrative purposes only and are not intended as a complete or exclusive list of the items which may be deferred or the nature of the deferral which might be granted.

1. Examples of items, which, under appropriate circumstances might be varianced include:

Section 4.03: Floor Area - This section provides for the minimum space and occupancy standards of the Housing Code. For example, a dwelling unit is required to have at least one room which shall have not less than one hundred twenty (120) square feet of floor area, etc... A variance could be granted where areas are one (1) or two (2) percent smaller than required.

Section 4.05: Bathroom Fixtures - Lavatories are required to be provided on each floor at a rate of one for every additional ten (10) guests, etc... A variance can be granted for a lesser number of bathroom lavatories especially when rooms are equipped with operating lavatory sinks.

Section 4.11: Electrical - Kitchens are to be provided with not less than three (3) outlets. A variance can be granted to allow less than (3) electricial outlets generally based on the small size of the kitchen.

2. Examples of items, which, under appropriate circumstances ces might be deferred include:

Section 4.05: Kitchen - Every dwelling unit must be provided with a kitchen, and every kitchen must be provided with a sink, hot and cold running water, counter work space, cabinets etc... A deferral could be granted for the counter space requirement if a table is provided that could serve as counter space.

Section 4.12: Stair Construction - Every required stairway, except in dwellings are required to have headroom clearance of not less than six (6) feet six (6) inches measured vertically, etc... A deferral could be granted, provided adequate padding and warning signs were installed.

Section 4.05: Structural components - Structural components of buildings shall be reasonably decay free. A building that appears to have a limited, useful life has window sills and sashes with dry rot. A deferral could be granted for dry rot in wooden window sills where no moisture is seeping through the sill and no weather is coming through the meeting of the sill and sash. A deferral could not be granted for dry rot in the window sash, since such dry rot would make the windows unsafe for tenants to use.

The deferral for the window sill could be revoked; if upon subsequent inspection, conditions had detriorated and moisture was seeping into the wall or the room.

3. Examples of items, for which, under appropriate circumstances an extended time for compliance might be authorize include:

Section 4.07: Shelter - Every building shall be protected so as to provide shelter for the occupants against the weather. A building roof has a number of leaks and an inspection in November reveals that the building must be completely reroofed. Work to patch the leaks is ordered and scheduled immediately; an extension for reroofing is granted until late the following spring, to be scheduled when the weather is more accommodating.

Section 4.08: Maintenance - Every foundation, room and exterior wall, etc. shall be reasonably weathertight, watertight, damp free, etc. A large building has leaky mortar joints in the exterior walls, but an inspecting structural engineer has determined that the wall is sound enough to permit the owner an extended period of time during which to schedule the repair, e.g. two sides during one summer, the remaining two sides during a second summer.

E. The Director of Community Development or his designee is hereby authorized to apply to the Director for any departure from the Housing Code authorized by this section. No other person is authorized to make such application.

F. If the Director determines after inspection of a unit or building that a condition or circumstance has changed which materially and detrimentally affects the health or safety of the tenants, their neighbors, or the general public, the Director may revoke an order granting a deferral or extended time for compliance.

G. In addition, the departures authorized under this section shall be automatically revoked for any unit which is no longer available for low income occupancy as defined by this ordinance.

Section 8. Loans and Grants to Owners.

A. The Director of Community Development may authorize loans and grants to owners and receivers from the Downtown Housing Maintenance Account described in Section 9 and/or from such Community Development Block Grant Funds or other similarly restricted funds as may have been appropriated for the rehabilitation of rental units downtown or may in the future be appropriated specifically for the repair of low-income rental units pursuant to this Ordinance. Such loans and grants shall be made only for the reasonable cost of repairs necessary to make low-income rental units habitable and for the reasonable cost of any other repairs to the building in which such units are located which are necessary to make such units habitable. Such loans and grants shall be made only in accordance with the criteria set forth in this Section.

B. The Director of Community Development may make grants for repairs necessary to make low-income rental units habitable. The maximum grant amount shall be $2,000 per unit, to be awarded after the owner has committed his own maximum contribution to the repair of a unit.

C. The Director of Community Development may extend loans for the repair of low-income units as follows:

1. The maximum loan amount shall be $4,000 per unit.

2. The Director of Community Development may authorize the forgiveness of such loans at a rate of 20% per year, with a maximum forgiveness of $600 per year for each year the unit remains available for low-income occupancy, such forgiveness to continue until the entire amount has been forgiven; provided that the unit continues to be available for low-income occupancy during the entire forgiveness period.

3. The loans shall be made with no interest charged while the unit remains available for low income occupancy.

4. If for any reason the units become unavailable for low-income occupancy, the remainder of the loan shall be required to be repaid, and in addition the Director of Community Development may require the immediate repayment of the remaining balance or said Director may charge interest on the remaining balance at the then prevailing rate for the Washington State Housing Commission bond program.

D. The total amount of grants and loans authorized under this section shall not exceed $4,000 per unit for any three-year period.

E. The Director of Community Development shall prescribe such additional terms and conditions of such loans and grants as he deems appropriate. Within 30 days of the effective date of this ordinance, the Director of Community Development shall promulgate regulations describing the circumstances under which loans and grants will be approved and the general terms and conditions of such loans and grants.

Section 9. Downtown Housing Maintenance Account.

A. There is hereby created in the City Treasury an account in the General Trust Fund designated the "Downtown Housing Maintenance Account", from which Account grants and loans as specified in Section 8 of this ordinance may be made to owners or receivers to assist them in placing low-income rental units in habitable condition and from which Account shall be paid costs and expenses incurred by the City in connection with the repair of low-income rental units or buildings that can feasibly be made habitable.

B. Money from the following sources shall be deposited in the Fund:

1. Such sums as may be received by gift, bequest or contractual arrangement for maintenance and rehabilitation of downtown low-income rental housing purposes; and

2. Such sums as may be recovered by the City as repayment of loans or as reimbursement of costs of expenses of repair of units that were found to be uninhabitable where such funds originated from this account.

C. The monies in the Account are hereby appropriated for the purposes described above and the City Comptroller is authorized to draw and the City Treasurer to pay the necessary warrants upon vouchers approved by the Director of Community Development from the appropriated Account.

Section 10. Termination of Duty to Repair and Duty to Rent.

A. The owner's duty to repair low-income rental units that can feasibly be made habitable and the owner's duty to make a good faith effort to rent low-income rental units shall cease if any of the following circumstances occur:

1. the Director determines that it is not feasible to repair units pursuant to Sections 6 and 12 or pursuant to the administrative relief provisions in Sections 10 and 12; or

2. a demolition or change of use permit covering the units isissued under the Housing Preservation Ordinance (Chapter 22.210 of the Seattle Municipal Code) or any successor ordinance and the owner complies with the terms of said Ordinance; or

3. the rental rate at which the units are offered for rent has exceeded the low-income rental rate established in Subsection 3D. for more than two years.

4. the rental unit is occupied by the owner as his or her personal residence.

B. There shall be no duty to offer a low-income rental unit for rent during a reasonable period of time necessary to repair or rehabilitate a unit or building if such repair or rehabilitation makes occupancy of that unit temporarily impracticable.

Section 11. Administrative Relief from Duty to Rent and Duty to Make Habitable.

In accordance with the procedures specified in Section 12 the Director may provide full or partial relief from the duty to offer low-income rental units for rent and/or the duty to make low-income rental units habitable, if the owner establishes with clear and convincing proof that:

A. The literal interpretation and strict application of the duty or offer for rent or the duty to make habitable constitute an unconstitutional taking of the owner's property.

B. The requested relief would be consistent to the extent possible with the objectives of this Ordinance.

C. The requested relief does not go beyond the minimum necessary to prevent the unconstitutional taking of property, and does not constitute a grant of special privilege inconsistent with the limitations upon other similar properties.

Section 12. Administrative Investigation of and Determination on Alleged Failures to Rent or Repair.

A. Inspection

The Director shall inspect any building that he has reason to believe contains low-income rental units that the owner is not making a good faith effort to rent or low-income rental units that are not habitable but could feasibly be made habitable.

B. Application for and Determination on Departures

1. If the Director finds low-income rental units that are not habitable, he shall notify the Director of Community Development who shall have 15 days to determine if an application for a departure or departures as authorized in Section 7 is appropriate and, if so, to submit an application requesting such departures to the Director.

2. If application for departure is made, the Director shall serve upon owner of the building, as shown upon the records of the Department of Records and Elections of King County a Notice of Probable Violation and Application for Departure citing the specific rental units which are not habitable, and the specific Code Violations identified and stating the specific variances, deferrals and/or extended time for compliance requests made and stating that the Director will accept comments on said application for a period of 10 days from service of the Notice. The Notice and Application shall be served and posted in the manner prescribed for a Complaint stated below. After the close of the comment period, the Director shall issue his decision granting, modifying or denying the requested departures and shall notify the owner, the Director of Community Development and those submitting comments of the decision.

C. Determination of Feasibility to Make Units Habitable

After the Director has granted or denied the requested departures, if any, he shall, using the standards as prescribed in Section 6, make a determination as to the feasiblity of making the uninhabitable units habitable.

D. Issuance of Complaint and Notice

1. If the Director finds that the owner has not made a good faith effort to rent or that the building contains low-income rental units that are not habitable but could feasibly be made habitable, he shall serve upon the owner of the building, as shown upon the records of the Department of Records and Elections of King county, a complaint, identifying the specific low-income rental units which are not

being offered for rent in good faith, the specific uninhabitable low-income rental units that could feasibly be made habitable, and, where applicable, the corrective action which the owner must take to make any low-income rental unit habitable and the amount of assistance available to the owner as determined by the Director of Community Development. The complaint shall be delivered by personal service, registered mail, or certified mail with return receipt requested, and shall be posted in a conspicuous place on the property. No complaint shall be issued for uninhabitable units if the owner holds a valid permit for the repairs, alterations, or improvements necessary to correct the noted deficiencies and is, in the opinion of the Director, making reasonable progress toward correcting those deficiencies.

2. The complaint shall: contain a notice that a hearing will be held before the Director at a specified time and place not less than ten (10) nor more than thirty (30) days after service of the complaint; explain that all parties have the right to file an answer to the complaint; advise the parties that they may appear in person or by representative and give testimony at the time and place designated in the complaint, and advise the parties that they may seek relief and present evidence as to whether or not administrative relief from the strict enforcement of the requirements of this ordinance as provided in Section 11 should be granted.

3. A copy of the complaint shall be filed with the King County Department of Records and Elections. In addition to serving and posting the complaint, the Director shall mail or cause to be delivered to the occupants of all rental units and/or commercial units in the building a notice informing the occupants of the filing of the complaint and advising them of the relevant procedures.

E. Administrative Hearing

The Director shall hold a hearing at the time and place specified in the complaint to take testimony on the allegations stated in the complaint and the defenses to such allegations and to receive evidence as to whether or not administrative relief should be granted in accordance with the standards set forth in Section 11, if such relief is sought by the owner at the hearing.

F. Report of Director of Community Development on Request for Administrative Relief

When administrative relief is sought pursuant to Section 11, the Director shall request from the Director of Community Development a report and recommendation analyzing whether application of the duties from which relief is sought would constitute an unconsitutional taking and the nature of the relief which would be appropriate, if any. The Community Development Director's report shall be made available to the owner and to any member of the public who requests it. The owner and any member of the public shall have fourteen days from the date the report is published to make comments to the Director concerning the appropriateness of the relief requested.

G. Determination and Order of Director After Hearing

After the hearing provided for in Subsection E and the report and public comment provided for in Subsection F the Director shall issue a written decision granting or denying administrative relief, if such relief has been requested and, if upon con-

sideration of the complete record before him the Director determines that the owner is not making a good faith effort to rent low-income rental units, or that the owner's building contains low-income rental units that are not habitable but could feasibly be made habitable, then he shall issue and cause to be served upon the owner in the manner provided in subsection D and shall post in a conspicuous place on the property, an order requiring the owner to repair, alter, or improve the uninhabitable units and/or make a good faith effort to rent vacant low-income rental units in the building within a time to be specified in the order. When determining a time for compliance, the Director shall take into consideration:

1. Any departures granted pursuant to Section 7;

2. Any administrative relief granted pursuant to Section 11;

3. The availability of city funds for repair of the units;

4. The type and degree of hazard cited in the complaint;

5. The owner's ability to correct the noted deficiencies;

6. The procedural requirements for obtaining a permit to correct the noted deficiencies;

7. The complexity of the required repairs or corrective action, including seasonal considerations, construction requirements and the legal rights of affected tenants; and

8. Circumstances beyond the owner's control.

Section 13. Appeal to Hearing Examiner from Order of Director.

A. Within fifteen (15) days from the date of service and posting of an order issued by the Director, the owner may file a written notice of appeal with the Office of the Hearing Examiner. The notice of appeal shall state the specific errors in the Director's order of proceedings and the specific grounds upon which a reversal or modification of the order is sought. The Director's decision to grant or deny administrative relief pursuant to Section 11 and the issues determined therein shall not be appealable to the Hearing Examiner. The notice of appeal shall be accompanied by a filing fee of Twenty-five Dollars ($25.00).

B. The Hearing Examiner shall consider the appeal in accordance with the procedures established by the Administrative Code of The City of Seattle (Chapter 3.02 of the Seattle Municipal Code) for hearing contested cases. Notice of hearing shall be provided to all parties not less than ten (10) days prior to the hearing. The Hearing Examiner's review shall be de novo. The Hearing Examiner may affirm, reverse or modify the order of the Director only if it is determined that the Director's decision is clearly erroneous.

C. The Hearing Examiner's final written decision containing findings of fact and conclusions of law shall be mailed to the parties of record and filed with the King County Department of Records and Elections.

D. The Director's order shall not be final until the time for filing an appeal with the Hearing Examiner has expired or until the issuance of the Hearing Examiner's decision if an appeal is taken; provided that, when the Director determines that the deficiencies noted in the complaint will cause immediate and irreparable harm, and so states in the notice and order issued, the order shall be final upon issuance by the Director.

Section 14. Petition to Superior Court.

Any appeal of a decision issued by the Hearing Examiner pursuant to Section 13 of this Ordinance must be filed in the Superior Court within thirty (30) days of the Hearing Examiner's decision.

Section 15. Certificate of Compliance.

A. If the Director finds that the repairs, alterations, improvements or other actions required in a final order have been satisfactorily completed, he shall prepare and, upon request therefor, issue to any party upon whom the final order was served, a certificate of compliance, stating that the deficiencies noted in the final order have been corrected. The certificate of compliance shall be filed with the King County Department of Records and Elections.

B. The issuance of a certificate of compliance shall not be construed to relieve from or lessen the responsibility and liability of any person owning, operating or controlling any building or structure or owning, operating, controlling, or installing any equipment therein for any injury, death, damage, and/or loss of any sort sustained by any person, organization, or corporation arising out of any condition of the building, structure, or equipment; nor shall the City of Seattle or the Director be held to assume any liability by reason of any inspection, issuance of a certificate of compliance, or any other act or omission of the City or the Director in connection with the enforcement and administration of this ordinance.

Section 16. Extension of Compliance Date.

The Director may, in his discretion, extend the time for compliance with a final order. Neither extensions, nor the Director's refusal to grant an extension shall be subject to any appeal.

Section 17. Enforcement of Final Order.

Whenever any person fails to comply with a final order, the Director may:

A. Institute an action in Municipal Court to collect a civil penalty as provided in Section 18 of this ordinance; and/or

B. Use any procedure established in any other ordinance or by any other law for securing compliance; and/or

C. Abate the violation pursuant to the procedures provided in Section 20; provided, that nothing herein shall prevent the Director from using any procedure established in any other ordinance or by any other law for securing compliance; and/or

D. Request the Law Department to seek an injunction to compel compliance.

Section 18. Civil Penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person failing to comply with a final order of the Director of DCLU, violating any provision of this ordinance, or deliberately attempting to evade application of this Ordinance shall be subject to a civil penalty in the amount of $500.00 per day for each day of violation.

B. The penalties imposed by this Section shall be collected by a civil action brought in the name of the City and commenced in municipal court. The Director of Construction and Land Use shall notify the City Attorney in writing of the name of any person subjet to the penalty. The City Attorney shall, with the assistance of the Director of Construction and Land Use, take appropriate action to collect the penalty.

Section 19. Abatement.

In addition to, or as an alternative to seeking civil penalties as provided in Section 18, the Director may cause the defective condition or conditions to be repaired pursuant to Chapter 22.208 of the Seattle Municipal Code; provided, that the Director shall not repair such condition or conditions if the cost exceeds $4,000 per unit, calculated in accordance with the rules prescribed in Section 6.

Section 20. Receivership.

If a building contains uninhabitable low-income rental units that can feasibly be made habitable and/or the owner of a building is not making a good faith effort to rent low-income rental units or there are vacant units that constitute a threat to the public health and safety then the Director may request the Law Department to petition the Superior Court, pursuant to RCW 7.60.010 et seq. to appoint a receiver to manage and operate the building. In addition, the court may be directly petitioned for the appointment of a receiver by tenants who reside in the building under the following circumstances:

(1) where ten or more tenants reside in the building, three or more tenants join in bringing the petition;

(2) where less than ten, but more than five tenants reside in the building, two or more tenants join in bringing the petition;

(3) where five tenants or less reside in the building, one tenant or more brings the petition.

The purpose of the receivership shall be to take possession of the building for a period sufficient to accomplish and pay for repairs and improvements to uninhabitable units and/or to fill vacancies in units which have not been offered for rent in good faith. The receiver appointed:

A. May enter into a week-to week or month-to-month rental agreements for the rental of any vacant dwelling units and may take such steps as may be necessary to make vacant dwelling units available for rental and occupancy;

B. May enter into any contracts necessary to repair and improve the building and to make uninhabitable low-income rental units habitable;

C. May apply for and accept loans and grants from the City for the purpose of making low-income rental units habitable;

D. Shall be entitled to reasonable fees, commissions and necessary expenses which shall be paid out of the rents and income of the property in receivership or, upon approval by the Director, out of the Downtown Housing Maintenance Account;

E. Shall apply rents and income collected, to the extent not expended for repairs, improvements, and/or the preparation and rental of covered units, to the payment to City fines or penalties which may have been imposed upon the owner for violations of this ordinance or other housng ordinances and which remain upaid. Any rents or income remaining after the above expenses are paid shall be paid to the owner.

Section 21. Use of Remedies.

The remedies provided for in this Ordinance are not exclusive and may be used alone or in combination with the other remedies enumerated in this Ordinance. Nothing in this Ordinance shall be construed to supersede or repeal by implication the remedies available through enforcement of the Housing Code (Ordinance 106319) or any other City codes or ordinances.

Section 22. Severability.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 23. Effective Date.

This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the City Charter.

Ordinance

Passed by the City Council the 5th day of August, 1985 and signed by me in open session in authentication of its passage this 5th day of August, 1985

President of the City Council.

Approved by me this 8th day of August, 19__.

Mayor.

Filed by me this 8th day of August, 1985

ATTEST:

City Comptroller and City Clerk.

BY:

Deputy Clerk.

(SEAL)

Published_____

7-18R.1/PM:ksr

Appendix IV

New York's Anti-Warehousing Bills

New York's Anti-Warehousing Bills

The following are synopses of the anti-warehousing bills before the New York State Legislature (A. 6795), and the New York City Council (Intro. No. 369). The text of these bills follows.

State Legislature

A. 6795, introduced March 31, 1987 by Assembly members Gottfried, Grannis, E.C. Sullivan, Hevesi and Daniels.

Landlords' Duty. Landlords would have to make a "good faith effort" to rent all vacant habitable apartments. In deciding whether a landlord has made a "good faith effort," the New York State Division of Housing and Community Renewal (DHCR) would consider whether the landlord:

* Maintained a building-wide vacancy rate greater than 5 percent or two dwelling units, whichever is greater;

* Offered apartments at a rent higher than the legal rent;

* Failed to offer a habitable vacant apartment for rent within seven days;

* Engaged in a course of conduct designed to induce tenants to vacate. (This includes reducing building services, failing to correct code violations that endanger the health or safety of tenants; committing or causing vandalism; interfering with the tenants' exercise of their legal rights.)

Apartments Covered by Law. The bill would apply to all rent-regulated apartments -- i.e., those located in buildings with six or more units built before 1969, or in buildings built or rehabilitated under the 421 and J-51 tax abatement programs.

Duty to Repair. In general, a landlord would have to rent habitable units only, or units that could feasily be made

habitable. However, a landlord would have to repair an uninhabitable unit if he had "wilfully or wantonly" failed to comply with the building code, or vandalized or caused the vandalizing of a rental unit or the building.

When Duty to Rent Ends. A landlord's duty to rent vacant apartments would end if he received the permits required to demolish them or to convert them to a different use; he received the permits necessary to rehabilitate the apartments (but the landlord would have to rent the apartments once they were rehabilitated); the municipality ordered the demolition or sealing of the building; the building was declared unsafe by a court (so long as the owner did not create the unsafe conditions); or a government agency ordered the building vacated.

Penalties for Violation. If a landlord violated the law, DHCR would issue an order to stop the violation. If the owner then violated this order, he could be fined $500 for each apartment in violation, plus $250 per day for each day the violation continued. In addition, an owner could be denied a certificate of occupancy or a building permit on any site on which a violation existed within the previous 36 months. He could also be denied any rent increases to which he would otherwise be entitled. And, a court could appoint a 7-A Administrator for the purpose of renting the vacant apartments. Complaints against landlords could be filed by DHCR or HPD, by the tenants in the building in which the violation occurred, or by a neighborhood preservation corporation.

Intro No. 369, introduced by Council Members Michels, Messinger, Greitzer, Albanese, Maloney, Friedlander, Robles, Gerges, DeMarco, Povman, Foster, Alter, Berman, Eisland, Wooten, DiBrienza, Horwitz, Leffler, McCaffrey and Crispino.

Landlords' Duty. Landlords would have a duty to make a "good faith effort" to rent habitable vacant apartments. To determine whether a landlord was making a good faith effort, the New York City Department of Housing Preservation and Development (HPD) would look at whether the landlord:

* Failed to offer a vacant apartment for rent within seven days of the vacancy;

* Offered vacant apartments at rents higher than the legal rent or comparable market rents;

* Reduced building services so as to threaten the health or safety of the tenants;

* Harrassed tenants;

* Violated applicable housing and building codes so as to endanger the health or safety of the tenants;

* Committed or caused vandalism to the building or an apartment;

* Rented to tenants with a financial interest in the building.

Apartments Covered by Law. The law would apply to all apartments in buildings with three or more units, except owner-occupied buildings with five apartments or less, or co-operatives or condominiums.

When Duty to Rent Ends. An owner's duty to rent vacant apartments would end if he received the permits necessary to demolish the building or to convert it to a different use; if he

received the permits required to rehabilitate the apartment (but the existing tenant would have to be given the right of first refusal to move back in when the rehabilitation was completed); or if the city ordered the demolition of the building.

Penalties for Violation. A landlord who violated an HPD order to rent warehoused apartments would be subject to a fine of $500 for each apartment warehoused, plus $250 per day for each day the violation continued. In addition, an owner would be denied building permits or a certificate of occupancy for any site on which a warehousing violated existed in the previous three years. Complaints against landlords who warehouse apartments could be filed by tenants or by HPD.

STATE OF NEW YORK

6795

1987-1988 Regular Sessions

IN ASSEMBLY

March 31, 1987

Introduced by M. of A. GOTTFRIED, GRANNIS, E. C. SULLIVAN, HEVESI, DANIELS -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, BRODSKY, CLARK, COLMAN, DAVIS, DIAZ, DUGAN, ENGEL, FELDMAN, HILLMAN, KOPPELL, LAFAYETTE, LOPEZ, MARSHALL, MURTAUGH, NADLER, NOLAN, PASSANNANTE, PATTON, RIVERA, SEMINERIO, VITALIANO, WEINSTEIN, ZALESKI -- read once and referred to the Committee on Housing

AN ACT to amend the emergency tenant protection act of nineteen seventy-four, the administrative code of the city of New York and the real property actions and proceedings law, in relation to the restoration to the rental market of habitable housing units and repealing subdivision one of section seven hundred seventy-two of the real property actions and proceedings law relating to the contents of petition directing deposit of rents

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and statement of policy. The legislature hereby finds and declares that the housing emergency which has required the imposition and continuance of controls of residential rents and eviction in certain communities in the state is aggravated by the unjustified withholding from the rental market by certain owners of units which are currently safe and suitable for occupancy or could be made safe and suitable without unreasonable expenditure. In a period of severe housing shortage, such systematic refusals to make existing and suitable housing units available, whether motivated by the intention to produce a maximum profit in connection with a cooperative or condominium conversion, to clear a building of occupants for purposes of redevelopment as luxury housing, or for other motives, requires regulation to prevent the further diminution of a scarce resource. Such warehousing of apartments must, accordingly, be regulated during the present housing

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD03760-08-7

emergency. The legislature finds that the existing administrative and regulatory procedures of the emergency tenant protection act of nineteen seventy-four, other rent and housing laws and article seven-A of the real property actions and proceedings law can most appropriately be utilized to carry out this form of regulation. The necessity for the enactment of the provisions hereinafter set forth is accordingly hereby declared as a matter of legislative determination.

§ 2. Section four of chapter five hundred seventy-six of the laws of nineteen hundred seventy-four, constituting the emergency tenant protection act of nineteen seventy-four, is amended by adding a new section seven-a to read as follows:

§ 7-a. Duty to maintain and rent habitable units. a. All habitable housing accommodations subject to this act and all such housing accommodations that can feasibly be made habitable shall be offered to prospective tenants for rent upon such terms and conditions as are authorized pursuant to this act. An owner's failure or refusal to make a good faith effort to rent any such housing accommodations shall constitute a violation of this act.

b. (1) In determining whether an owner is failing or refusing to make a good faith effort to rent rental units or put and keep rental units in a habitable condition, the division of housing and community renewal may consider any actions by the owner which are inconsistent with keeping units habitable and/or occupied. Such actions may include, but shall not be limited to, the following: maintaining a building vacancy rate in excess of five percent or in excess of two dwelling units, whichever is greater; offering units for rent at a level higher than that permitted by this act; failing to offer a habitable unoccupied unit for rent within seven days; or engaging in any course of conduct designed to induce tenants to vacate.

(2) A course of conduct designed to induce tenants to vacate may be shown by conduct including but not necessarily limited to wilfully and intentionally reducing building services; unreasonably changing rules, regulations, terms, or conditions of tenancy so as to substantially detrimentally affect the rights and obligations of tenants or prospective tenants; wilfully or wantonly failing to comply with applicable state or local codes with respect to the building, the violation of which substantially endangers or impairs the health or safety of the occupants; committing or causing vandalism or the intentional destruction of a rental unit or building; interfering with or attempting to interfere with the peaceful and quiet enjoyment of the building by the tenants; or other negligent or intentional conduct that interferes with the tenants' exercise of their legal rights in relation to the building.

c. (1) For purposes of this section, buildings and units shall be deemed habitable if they are reasonably fit and safe for occupancy, whether the buildings are in total compliance with all building, housing and other safety codes or not.

(2) Whether or not a unit is reasonably fit and safe for occupancy, it shall be repaired by the owner and offered for rent as provided in this section if the owner has:

(i) wilfully or wantonly failed to comply with applicable codes with respect to the building, the violation of which substantially endangers or impairs the health or safety of the occupants; or

(ii) committed or caused vandalism or the intentional destruction of a rental unit or building which has resulted in a condition which renders the building or units therein uninhabitable.

(3) The owner's duty to make a good faith effort to rent rental units shall cease when (i) the owner receives the permits required to demolish the units or convert them to a different use or (ii) the owner has received the permits required to rehabilitate the units which rehabilitation requires that such units be temporarily vacant provided, however, that the duty to rent such units shall commence when such rehabilitation is completed or (iii) the municipality has ordered demolition or sealing of the building under applicable law, or has commenced judicial or administrative proceedings to seek such order, provided however that if such order is denied or reversed the exemption provided by this clause shall not thereafter apply or (iv) the building is declared unsafe by a court of competent jurisdiction, and it is determined by the commissioner that the building cannot be repaired or that the cost of repairing the building would substantially equal or exceed its appraised value, and it is found that the conditions that resulted in the building being declared unsafe are not the result of intentional acts or substantial neglect by the owner or agents of the owner or (v) the owner has been given an order to vacate the building by a governmental agency, provided however, that the exemption provided by this clause shall prospectively terminate if the owner fails to comply with the requirements of such vacate order to repair and /or re-rent such housing accommodation or (vi) the commissioner determines that good cause exists, consistent with the purposes of this act, to not rent such units.

d. If it is found by the commissioner that an owner is in violation of a provision of this act, the commissioner shall issue an order to the owner to cease such violation. If an owner violates such order, the provisions of section twelve of this act shall apply. In addition, if an owner is found by the commissioner to be in violation of this section, the owner shall not be entitled to receive any increase in rent under this act or the rent stabilization law of nineteen hundred sixty-nine during or applicable to the period from the beginning of the violation until it is removed.

e. Without limiting the provisions of section thirteen of this act, the state division of housing and community renewal may request and shall receive from any local agency having jurisdiction, any records and information relating to violations or building history or condition which may be required for the effective administration of this section.

§ 3. Paragraph five of subdivision a of section twelve of such act, as amended by chapter four hundred three of the laws of nineteen hundred eighty-three, is amended to read as follows:

(5) Violations of this act or of the regulations and orders issued pursuant thereto may be enjoined by the supreme court upon proceedings commenced by the state division of housing and community renewal or the tenant or tenants who allege they have been overcharged or reside in a building which is in violation of the provisions of section seven-a of this act. The division shall not be required to post bond.

§ 4. The administrative code of the city of New York is amended by adding a new section 26-514.1 to read as follows:

§ 26-514.1 Duty to maintain and rent habitable units. a. All habitable housing accommodations subject to this law and all such housing accommodations that can feasibly be made habitable shall be offered to prospective tenants for rent upon such terms and conditions as are authorized pursuant to this law. An owner's failure or refusal to make a good faith effort to rent any such housing accommodations shall constitute a violation of this law.

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b. (1) In determining whether an owner is failing or refusing to make a good faith effort to rent rental units or put and keep rental units in a habitable condition, the division of housing and community renewal may consider any actions by the owner which are inconsistent with keeping units habitable and/or occupied. Such actions may include, but shall not be limited to, the following: maintaining a building vacancy rate in excess of five percent or in excess of two dwelling units, whichever is greater; offering units for rent at a level higher than that permitted by this law; failing to offer a habitable unoccupied unit for rent within seven days; or engaging in any course of conduct designed to induce tenants to vacate.

(2) A course of conduct designed to induce tenants to vacate may be shown by conduct including but not necessarily limited to wilfully and intentionally reducing building services; unreasonably changing rules, regulations, terms, or conditions of tenancy so as to substantially detrimentally affect the rights and obligations of tenants or prospective tenants; wilfully or wantonly failing to comply with applicable state or local codes with respect to the building, the violation of which substantially endangers or impairs the health or safety of the occupants; committing or causing vandalism or the intentional destruction of a rental unit or building; interfering with or attempting to interfere with the peaceful and quiet enjoyment of the building by the tenants; or other negligent or intentional conduct that interferes with the tenants' exercise of their legal rights in relation to the building.

c. (1) For purposes of this section, buildings and units shall be deemed habitable if they are reasonably fit and safe for occupancy, whether the buildings are in total compliance with all building, housing and other safety codes or not.

(2) Whether or not a unit is reasonably fit and safe for occupancy, it shall be repaired by the owner and offered for rent as provided in this section if the owner has:

(i) wilfully or wantonly failed to comply with applicable codes with respect to the building, the violation of which substantially endangers or impairs the health or safety of the occupants; or

(ii) committed or caused vandalism or the intentional destruction of a rental unit or building which has resulted in a condition which renders the building or units therein uninhabitable.

(3) An owner's duty to make a good faith effort to rent rental units shall cease when (i) the owner receives the permits required to demolish the units or convert them to a different use or (ii) the owner has received the permits required to rehabilitate the units which rehabilitation requires that such units be temporarily vacant provided, however, that the duty to rent such units shall commence when such rehabilitation is completed or (iii) the municipality has ordered demolition or sealing of the building under applicable law, or has commenced judicial or administrative proceedings to seek such order, provided however that if such order is denied or reversed the exemption provided by this clause shall not thereafter apply or (iv) the building is declared unsafe by a court of competent jurisdiction, and it is determined by the commissioner that the building cannot be repaired or that the cost of repairing the building would substantially equal or exceed its appraised valuation, and it is found that the conditions that resulted in the building being declared unsafe are not the result of intentional acts or substantial neglect by the owner or agents of the owner or (v) the owner has been given an order to vacate the building by a governmental agency, provided however, that the exemption provided by this clause shall

prospectively terminate if the owner fails to comply with the requirements of such vacate order to repair and/or re-rent such housing accommodation or (vi) the commissioner determines that good cause exists, consistent with the purposes of this law, to not rent such units.

d. If it is found by the commissioner that an owner is in violation of a provision of this law, the commissioner shall issue an order to the owner to cease such violation. If an owner violates such order, the provisions of section 26-516 of this law shall apply. In addition, if an owner is found by the commissioner to be in violation of this section, the owner shall not be entitled to receive any increase in rent under this law, the city rent and rehabilitation law or the emergency tenant protection act of nineteen seventy-four during or applicable to the period from the beginning of the violation until it is removed.

e. The state division of housing and community renewal may request and shall receive from any local agency having jurisdiction, any records and information relating to violations or building history or condition which may be required for the effective administration of this section.

§ 5. Subdivision e of section 26-516 of such code is amended to read as follows:

e. Violations of this law, or of the code and orders issued pursuant thereto may be enjoined by the supreme court upon proceedings commenced by the state division of housing and community renewal [which] or the tenant or tenants who reside in a building which is in violation of section 26-514.1 of this law. The division shall not be required to post bond.

§ 6. Title twenty-six of such code is amended by adding a new chapter nine to read as follows:

CHAPTER 9
DUTY TO RENT HABITABLE HOUSING ACCOMMODATIONS

Section 26-801 Definitions.
26-802 Duty to rent habitable housing accommodations.
26-803 Investigation, complaint and notice.
26-804 Determination and order of commissioner after hearing.
26-805 Enforcement of final order.
26-806 Penalty.

§ 26-801 Definitions. As used in this chapter: a. "Commissioner" means the commissioner of the department of housing preservation and development.

b. "Department" means the department of housing preservation and development.

c. "Housing accommodations" means a housing accommodation as defined in the emergency tenant protection act of nineteen hundred seventy-four, the city rent and rehabilitation law or the rent stabilization law of nineteen hundred sixty-nine.

§ 26-802 Duty to rent habitable housing accommodations. a. All habitable housing accommodations and all housing accommodations that can feasibly be made habitable shall be offered to prospective bona fide tenants for rent. Owners of such housing accommodations shall make a good faith effort to rent them to bona fide tenants.

b. (1) In determining whether an owner is failing or refusing to make a good faith effort to rent a habitable housing accommodation or put and keep a habitable housing accommodation in a habitable condition, the department may consider any actions by the owner which are inconsistent with keeping units habitable and/or occupied. Such actions may include, but shall not be limited to, the following: maintaining a building

vacancy rate in excess of five percent or in excess of two dwelling units, whichever is greater; offering units for rent at a level higher than that permitted by the applicable law; failing to offer a habitable unoccupied unit for rent within seven days; or engaging in any course of conduct designed to induce tenants to vacate.

(2) A course of conduct designed to induce tenants to vacate may be shown by conduct including but not necessarily limited to wilfully and intentionally reducing building services; unreasonably changing rules, regulations, terms, or conditions of tenancy so as to substantially detrimentally affect the rights and obligations of tenants or prospective tenants; wilfully or wantonly failing to comply with applicable state or local codes with respect to the building, the violation of which substantially endangers or impairs the health or safety of the occupants; committing or causing vandalism or the intentional destruction of a rental unit or building; interfering with or attempting to interfere with the peaceful and quiet enjoyment of the building by the tenants; or other negligent or intentional conduct that interferes with the tenants' exercise of their legal rights in relation to the building.

c. (1) For purposes of this chapter, housing accommodations shall be deemed habitable if they are reasonably fit and safe for occupancy, whether the buildings are in total compliance with all building, housing and other safety codes or not.

(2) Whether or not a housing accommodation is reasonably fit and safe for occupancy, it shall be repaired by the owner and offered for rent as provided in this chapter if the owner has:

(i) wilfully or wantonly failed to comply with applicable codes with respect to the building, the violation of which substantially endangers or impairs the health or safety of the occupants; or

(ii) committed or caused vandalism or the intentional destruction of a rental unit or building which has resulted in a condition which renders the building or units therein uninhabitable.

(3) An owner's duty to make a good faith effort to rent habitable housing accommodations shall cease when (i) the owner receives the permits required to demolish the habitable housing accommodations or convert them to a different use or (ii) the owner has received the permits required to rehabilitate the habitable housing accommodations which rehabilitation requires that such units be temporarily vacant provided, however, that the duty to rent such habitable housing accommodations shall commence when such rehabilitation is completed or (iii) the department has ordered demolition or sealing of the building under applicable law, or has commenced judicial or administrative proceedings to seek such order, provided however that if such order is denied or reversed the exemption provided by this clause shall not thereafter apply or (iv) the building is declared unsafe by a court of competent jurisdiction, and it is determined by the commissioner that the building cannot be repaired or that the cost of repairing the building would substantially equal or exceed its appraised value, and it is found that the conditions that resulted in the building being declared unsafe are not the result of intentional acts or substantial neglect by the owner or agents of the owner or (v) the owner has been given an order to vacate the building by a governmental agency, provided however, that the exemption provided by this clause shall prospectively terminate if the owner fails to comply with the requirements of such vacate order to repair and/or re-rent such building or (vi) the commissioner determines that good cause exists, consistent with the purposes of this chapter, not to rent such habitable housing accommodations.

§ 26-803 Investigation, complaint and notice. a. Upon the allegation of a tenant or upon other reasonable grounds to believe that an owner is in violation of section 26-802 of this chapter, the commissioner shall serve upon the owner of the housing accommodation a complaint identifying the grounds for the violation. In addition, the complaint shall be posted in a conspicuous place on the property.

b. A complaint pursuant to subdivision a of this section shall: (1) contain a notice that a hearing will be held before the commissioner at a specified time and place not less than seven days nor more than fourteen days after service of the complaint; (2) provide that the owner shall have the right to file an answer to the complaint; and (3) advise the owner that he may appear either in person or by representative and give testimony at the time and place designated in the complaint. In addition to serving and posting the complaint, wherever possible, the commissioner shall mail or cause to be delivered to the occupants of all dwelling units in the multiple dwelling, a notice informing the occupants of the filing of the complaint and advising them of the relevant procedures.

§ 26-804 Determination and order of commissioner after hearing. The commissioner shall conduct a hearing on complaints served pursuant to section 26-803 of this chapter. Tenants shall have a right to appear at said hearing. If after the hearing, the commissioner determines that the owner is not making a good faith effort to rent habitable housing accommodations, the commissioner shall make an order and cause said order to be served upon the owner in the manner provided in section 26-803, and shall post said order in a conspicuous place on the subject property. Said order shall require the owner to offer for rent within seven days any vacant habitable housing accommodation withdrawn from the market in violation of section 27-802 of this code. In addition, where the commissioner finds that the owner has reduced building services, intentionally failed to comply with the applicable housing and building codes, or committed or caused to be committed vandalism or the intentional destruction of a housing accommodation, he shall order the owner to correct said conditions so as to make the housing accommodation habitable and rent the dwelling units as provided above.

§ 26-805 Enforcement of final order. Whenever any person fails to comply with a final order, the commissioner shall:

a. Institute an action in any court of competent jurisdiction to recover the civil penalties; and/or

b. Seek an injunction to compel compliance with the order of the commissioner in any court of competent jurisdiction; and/or

c. Send notification to the commissioner of the department of buildings of his findings.

§ 26-806 Penalty. a. An owner who violates the provisions of section 26-802 shall be subject to a civil penalty of five hundred dollars for each housing accommodation cited in the order issued pursuant to section 26-804. In addition, an owner who fails to comply with the order within the time specified in the order shall be subject to a civil penalty of two hundred fifty dollars per day for each housing accommodation to be calculated from a date ten days after service of the order to the date of compliance therewith.

b. The commissioner shall not issue a certificate of occupancy or a permit on the site of any multiple dwelling where the commissioner has found that there has been a violation of section 26-802 at such site within the thirty-six month period prior to the date of submission of an application for such permit.

§ 7. Subdivision one of section seven hundred sixty-nine of the real property actions and proceedings law, as amended by chapter eight hundred seventy-seven of the laws of nineteen hundred eighty-two, is amended to read as follows:

1. A special proceeding by tenants of a dwelling, or by another party as provided in this article, in the city of New York or the counties of Nassau, Suffolk, Rockland and Westchester for a judgment directing the deposit of rents into court and their use for the purpose of remedying conditions dangerous to life, health or safety, or other relief provided in this article, may be maintained in the civil court of the city of New York, the district court of the counties of Suffolk and Nassau and the county courts or city courts in the counties of Rockland and Westchester.

§ 8. Section seven hundred seventy of such law, as amended by chapter six hundred fifty-five of the laws of nineteen hundred seventy-eight, subdivision one as amended by chapter eight hundred seventy-seven of the laws of nineteen hundred eighty-two, is amended to read as follows:

§ 770. [Grounds] Petitioners; grounds for the proceeding. 1. [One-third] A proceeding under this article may be maintained by:

(a) one-third or more of the tenants occupying a dwelling located in the city of New York or the counties of Nassau, Suffolk, Rockland and Westchester;

(b) the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city[, or in the counties of Nassau, Suffolk,Rockland and Westchester may maintain a];

(c) the state division of housing and community renewal; or

(d) a not-for-profit corporation funded in whole or in part by the state division of housing and community renewal for the purpose of providing neighborhood preservation services in an area in which the dwelling is located.

2. A special proceeding as provided in this article[,] may be maintained upon the [ground] grounds that there exists in such dwellings or in any part thereof:

(a) a lack of heat or of running water or of light or of electricity or of adequate sewage disposal facilities, or any other condition dangerous to life, health or safety, which has existed for five days, or an infestation by rodents, or any combination of such conditions; or

(b) a course of conduct by the owner or his agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health or safety; or

(c) A failure or refusal to make a good faith effort to rent housing accommodations as required by section seven-a of the emergency tenant protection act of nineteen seventy-four or section 26-514.1 or chapter nine of title twenty-six of the administrative code of the city of New York.

[2.] 3. If the proceeding is instituted by [the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city,] a party other than tenants, then one-third or more of the tenants may, at any time thereafter during the pendency of the proceeding or after final judgment pursuant to section seven hundred seventy-six or seven hundred seventy-seven of this article, petition for substitution of themselves in place and stead of [such commissioner of such department] the other party. Such substitution shall be ordered by the court unless good reason to the contrary shall be shown.

§ 9. Subdivision one of section seven hundred seventy-two of such law is REPEALED and a new subdivision one is added to read as follows:

1. Allege material facts establishing one or more of the grounds set out in section seven hundred seventy of this article.

§ 10. Subdivision b of section seven hundred seventy-six of such law, as amended by chapter eight hundred seventy-seven of the laws of nineteen hundred eighty-two, is amended to read as follows:

b. Directing that (1) the rents due on the date of the entry of such judgment from the petitioning tenants and the rents due on the dates of service of the judgment on all other residential and non-residential tenants occupying such dwelling from such other tenants, shall be deposited with the administrator appointed by the court, pursuant to section seven hundred seventy-eight of this article; (2) any rents to become due in the future from all tenants occupying such dwelling shall be deposited with such administrator as they fall due; (3) such deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy the condition or conditions alleged in the petition [and]; (4) the administrator shall comply with the provisions of section seven-a of the emergency tenant protection act of nineteen seventy-four or section 26-514.1 or chapter nine of title twenty-six of the administrative code of the city of New York, as may be applicable; and (5) upon the completion of such work in accordance with such judgment, any remaining surplus shall be turned over to the owner, together with a complete accounting of the rents deposited and the costs incurred; and granting such other and further relief as to the court may seem just and proper. A certified copy of such judgment shall be served personally upon each non-petitioning tenant occupying such dwelling and upon the city of New York by service as provided in subdivision five of section seven hundred seventy-one of this article. If personal service on any such non-petitioning tenant cannot be made with due diligence, service on such tenant shall be made by affixing a certified copy of such judgment on the entrance door of such tenant's apartment, store or other unit and, in addition, within one day after such affixing, by sending a certified copy thereof by registered mail, return receipt requested, to such tenant. Any right of the owner of such dwelling to collect such rent moneys from any petitioning tenant of such dwelling on or after the date of entry of such judgment, and from any non-petitioning tenant of such dwelling on or after the date of service of such judgment on such non-petitioning tenant as herein provided, shall be void and unenforceable to the extent that such petitioning or non-petitioning tenant, as the case may be, has deposited such moneys with the administrator in accordance with the terms of such judgment, regardless of whether such right of the owner arises from a lease, contract, agreement or understanding heretofore or hereafter made or entered into or arises as a matter of law from the relationship of the parties or otherwise. It shall be a valid defense in any action or proceeding against any such tenant to recover possession of real property for the non-payment of rent or for use or occupation to prove that the rent alleged to be unpaid was deposited with the administrator in accordance with the terms of a judgment entered under this section.

§ 11. Section seven hundred seventy-six of such law is amended by adding a new subdivision c to read as follows:

c. Notwithstanding the provisions of subdivision b of this section, where the relief provided by the court is limited to the appointment of an administrator for the purpose of renting vacant dwelling units, the court may limit the provisions of the judgment requiring the depositing

of rents to the extent reasonably necessary to cover the costs of preparing the dwelling units for occupancy and the costs of renting them.

§ 12. This act shall take effect immediately; provided that the amendment to sections seven-a and twelve of the emergency tenant protection act of nineteen seventy-four made by sections two and three of this act shall expire on the same date as such act expires and shall not affect the expiration of such act pursuant to section seventeen of chapter five hundred seventy-six of the laws of nineteen hundred seventy-four and provided further that the amendment to sections 26-514.1 and 26-516 of the rent stabilization law of nineteen hundred sixty-nine made by sections four and five of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law.

City Council bill

Int. No. 369

By Council Members Michels, Messinger, Greitzer, Albanese, Maloney, Friedlander, Robles, Gerges, DeMarco, Povman, Foster, Alter, Berman, Eisland, Wooten, DiBrienza, Horwitz, Leffler, McCaffrey and Crispino.

To amend the administrative code of the city of New York, in relation to the unreasonable withdrawal of rental units from the market.

Be it enacted by the Council as follows:

Section 1. *Findings and Purpose.* The City Council hereby finds that a public emergency exists as a result of an acute housing shortage: that there is a negligible vacancy rate and increasing numbers of homeless people: that there is widespread speculation and profiteering in the rental housing market: that habitable rental units are kept vacant for speculative purposes: that the practice of withdrawing habitable rental apartments from the market causes unreasonable rent increases, overcrowding and homelessness: that vacant rental units constitute a potential hazard to the occupants of adjacent units and buildings: that said situation threatens the public health, safety and general welfare: that to prevent injury to the public health, safety and general welfare, the intervention of City government is necessary. That this law is passed to protect the public health, safety and welfare by prohibiting the practice of withdrawing vacant rental habitable apartments from the housing market, and by encouraging the rental of available housing units.

Section 2. Article ten of title D of chapter twenty-six of the administrative code of the city of New York is amended by adding new section D26-10.11 to read as follows:

Section D26-10.11 *Duty to Rent Habitable Dwelling Units:*

A. For the purpose of this section, (1) "Multiple dwelling" shall mean a multiple dwelling as such term is defined in section D26-1.07.7 of the housing maintenance code except owner-occupied dwellings of five or less dwelling units and dwelling units owned on a cooperative or condominium basis;

(2) "Habitable" shall mean reasonably fit and safe for residential occupancy, whether the buildings are in total compliance with all building, housing and other safety codes or not; and (3) "dwelling units" shall mean any residential accommodation in a multiple dwelling as such term is defined herein.

B. Owners of multiple dwellings to which this law applies shall make a good faith effort to rent habitable dwelling units to bona fide tenants. An owner's failure or refusal to make such a good faith effort shall subject the owner to the penalties provided in Sections D26-40.14 and C26-118.11. Such penalties shall not be construed to exclude any other remedy provided by law, and shall be in addition to any other penalties provided by law.

C. *Determining Good Faith Effort to Rent to Bona Fide Tenants.* To determine whether an owner is failing or refusing to make a good faith effort to rent habitable dwelling units to bona fide tenants, the commissioner may consider any actions by the owner which are inconsistent with keeping dwelling units habitable and/or occupied by bona fide tenants. Such actions may include, but shall not be limited to: failing to offer an unoccupied unit for rent within seven days from termination of the prior tenancy; offering units at monthly rentals which substantially exceed legally permissible rental under any applicable rent regulation law or for units not subject to rent regulation, the market rental comparable; reducing building services so as to threaten the health and safety of tenants; engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace and quiet of a tenant in the use or occupancy of the dwelling unit; harassing tenants, intentionally failing to comply with applicable housing and building codes with respect to the multiple dwelling or dwelling units so as to substantially endanger or impair the health or safety of the tenants; committing or causing to be committed vandalism or the intentional destruction of a dwelling unit or multiple dwelling, renting to tenants who have a financial interest in the building or in any other business in which the owner has a financial interest. Where a financial interest in business is established by reason of ownership of stock, ownership of less than five percent of the outstanding shares of the business by either the owner or the tenant shall not indicate failing or refusing to make the requisite good faith effort.

D. *When Requirement for Good Faith Effort to Rent Ceases.* An owner's duty to make a good-faith effort to rent dwelling units shall cease when (i) the owner receives the permits required to demolish the units or convert them to a different use or; (ii) the owner has received the permits required to rehabilitate the units when such rehabilitation requires that the units be temporarily vacant, provided however that the duty to rent such units shall commence when the department determines that the permits were applied for to circumvent this section or when such rehabilitation is completed in which case the tenant occupying the unit immediately prior to the

rehabilitation shall have the right of first refusal to re-occupy such premises; or (iii) the department has ordered demolition or sealing of the building under applicable law or has commenced judicial or administrative proceedings to seek such order, or (iv) the commissioner determines that good cause exists, consistent with the purposes of this section, not to rent such units.

Section 3: Article 40 of the title D of chapter twenty-six of the administrative code of the city of New York is amended by adding new sections D26-40.08, D26-40.10, D26-40.12 and D26-40.14 to read as follows:

Section D26-40.08 *Investigation, Notice and Hearing*. Upon the allegation of a tenant or upon other reasonable grounds to believe that an owner is in violation of Section D26-10.11, the commisisoner shall serve upon the owner of the multiple dwelling a complaint identifying the grounds for the violation. In addition, the complaint shall be posted in a conspicuous place on the property.

The Compiaint shall: 1) contain a notice that a hearing will be held before the commissioner at a specified time and place not less than seven days (7) nor more than fourteen (14) days after service of the compiaint. 2) provide that the owner shall have the right to file an answer to the complaint; and 3) advise the owner that he may appear either in person or by representative and give testimony at the time and place designated in the complaint. In addition to serving and posting the complaint, wherever possible, the commissioner shall mail or cause to be delivered to the occupants of all dwelling units in the multiple dwelling, a notice informing the occupants of the filing of the complaint and advising them of the relevant procedures.

Section D26-40.10 *Determination And Order of Commissioner After Hearing*. The commissioner shall conduct a hearing as provided in Section D26-40.08. Tenants shall have a right to appear at said hearing. If after the hearing, the commissioner determines that the owner is not making a good faith effort to rent habitable dwelling units, the commissioner shall make an Order and cause said Order to be served upon the Owner in the manner provided in Section D26-40.08, and shall post said Order in a conspicuous place on the subject property. Said Order shall require the Owner to offer for rent within (7) days any vacant habitable units withdrawn from the market in violation of Section D26-10.11 at the legal rent if the dwelling unit is subject to rent regulation scheme or at rents comparable to rents for similar sized dwelling units in the multiple dwelling. In addition, where the commissioner finds that the Owner has reduced building services, intentionally failed to comply with the applicable housing and building codes, or committed or caused to be committed vandalism or the intentional destruction of a dwelling unit or multiple dwelling, he shall order the Owner to correct said conditions so as to make the dwelling units or multiple dwelling habitable and rent the dwelling units as provided above.

Section D26-40.12: *Enforcement of Final Order*. Whenever any person fails to comply with a final order, the Commissioner shall:

A. Institute an action in any court of competent jurisdiction to recover the civil penalties as provided in Section C61.9 of this law; and/or

B. Seek an injunction to compel compliance with the Order of the Commissioner in any court of competent jurisdiction.

C. Send notification to the commissioner of the Department of Buildings of his findings.

Section D26-40.14: An owner who violates the provisions of Section D26-40.08 shall be subject to a civil penalty of five hundred dollars for each dwelling unit cited in the Order issued pursuant to Section D26-40.10. In addition, an owner who fails to comply with the Order within the time specified in the Order shall be subject to a civil penalty of two hundred and fifty dollars per day for each dwelling unit to be calculated from a date ten days after Service of the Order to the date of compliance therewith.

Section 4: Title C of chapter twenty-six of the administrative code of the city of New York is amended by adding a new section C26-118.11 to read as follows:

Section C26-118.11. Denial of permit due to warehousing—The commissioner shall not issue a certificate of occupancy or a permit on the site of any multiple dwelling where the commissioner of housing preservation and development has found that there has been a violation of Section D26-10.11 at such site within 36-month period prior to the date of submission of an application for such permit.

Section 5: *Separability*. If any clause, sentence, paragraph, subdivision or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, in whole or in part, such judgment shall not affect, impair or invalidate the remainder thereof the application of any such clause, sentence, paragraph, subdivision, section or part of this title to other persons or circumstances.

Section 6. This local law shall take effect immediately.

Referred to the Committee on Housing and Buildings.